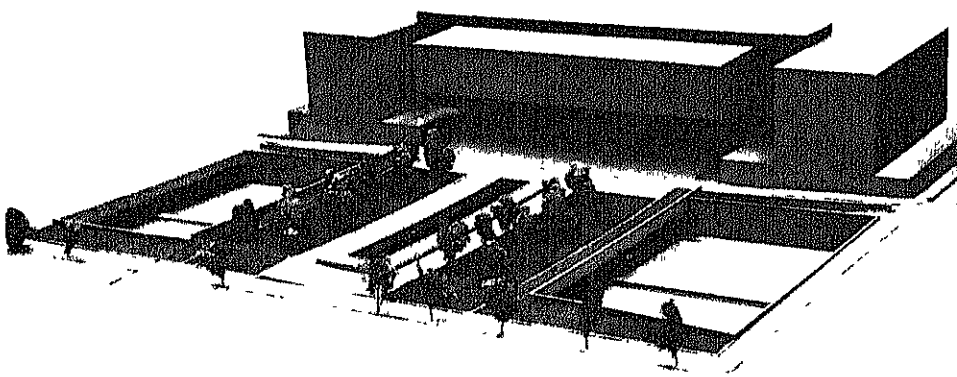
RULES OF PRACTICE AND PROCEDURE
UNITED STATES TAX COURT



EFFECTIVE JANUARY 1, 1974

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UNITED STATES TAX COURT

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TABLE OF CONTENTS

TITLE I.
SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

TITLE II. THE COURT

TITLE V. MOTIONS

TITLE VI. PARTIES

TITLE VII. DISCOVERY

APPENDICES TO THE RULES

TITLE I.
SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

RULE 1.
SCOPE OF RULES AND CONSTRUCTION

(a) Scope: These Rules govern the practice and procedure in all cases and proceedings in the United States Tax Court. Where in any instance there is no applicable rule of procedure, the Court or the Judge before whom the matter is pending may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand.

(b) Construction: These Rules shall be construed to secure the just, speedy, and inexpensive determination of every case.

RULE 2. EFFECTIVE DATE

(a) Initial Adoption: These Rules will take effect on January 1, 1974. They govern all proceedings and cases commenced after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the Court their application, in a particular case pending when the Rules take effect, would not be feasible or would work injustice, in which event the former procedure applies.

(b) Amendments: Amendments to these Rules shall state their effective date. Amendments shall likewise govern all proceedings both in cases pending on or commenced after their effective date, except to the extent otherwise provided, and subject to the further exception provided in paragraph (a) of this Rule.

RULE 3. DEFINITIONS

(a) **Division:** The Chief Judge may from time to time divide the Court into Divisions of one or more Judges and, in case of a Division of more than one Judge, designate the chief thereof.

(b) **Clerk:** Reference to the Clerk in these Rules means the Clerk of the United States Tax Court.

(c) **Commissioner:** Reference to Commissioner in these Rules means the Commissioner of Internal Revenue, unless the context of the particular Rule shows that the intended reference is to a commissioner of the Court as provided in Rule 180.

(d) **Time:** As provided in these Rules and in orders and notices of the Court, time means standard time in the location mentioned, except when advanced time is substituted therefor by law. For computation of time, see Rule 25.

(e) **Business Hours:** As to the Court's business hours, see Rule 10(d).

(f) **Filing:** For requirements as to filing with the Court, see Rule 22.

(g) **Code:** Any reference or citation to the Code relates to the Internal Revenue Code of 1954, as amended.

TITLE II. THE COURT

RULE 10. NAME, OFFICE AND SESSIONS

(a) Name: The name of the Court is the United States Tax Court.

(b) Office of Court: The principal office of the Court shall be in the District of Columbia, but the Court or any of its Divisions may sit at any place within the United States.

(c) Sessions: The time and place of sessions of the Court shall be prescribed by the Chief Judge.

(d) Business Hours: The office of the Clerk at Washington, D.C., shall be open during business hours on all days, except Saturdays, Sundays, and legal holidays, for the purpose of receiving petitions, pleadings, motions, and other papers. Business hours are from 8:45 a.m. to 5:15 p.m. For legal holidays, see Rule 25(b).

RULE 11. PAYMENTS TO COURT

All payments to the Court for fees or charges of the Court shall be made either in cash or in checks, money orders, or other drafts made payable to the order of "Clerk, United States Tax Court," and shall be mailed or delivered to the Clerk of the Court at Washington, D. C. For particular payments, see Rules 12(c) (copies of Court records), 20(b) (filing of petition), 175(a)(2) (small tax cases), and 200(e) (application to practice before Court).

RULE 12. COURT RECORDS

(a) Removal of Records: No original record, paper, document, or exhibit filed with the Court shall be taken from the courtroom or from the offices of the Court or from the custody of a Judge or employee of the Court, except as authorized by a Judge of the Court or except as may be

necessary for the Clerk to furnish copies or to transmit the same to other courts for appeal or other official purposes. With respect to return of exhibits after a decision of the Court becomes final, see Rule 143(d)(2).

(b) **Copies of Records:** After the Court renders its decision in a case, a plain or certified copy of any document, record, entry, or other paper, pertaining to the case and still in the custody of the Court, may be obtained upon application to the Clerk and payment of the required fee. Unless otherwise permitted by the Court, no copy of any exhibit or original document in the files of the Court shall be furnished to other than the parties until the Court renders its decision.

(c) **Fees:** The fees to be charged and collected for any copies will be determined in accordance with Code Section 7474. See Appendix III, p. 102.

RULE 13. JURISDICTION

(a) **Notice of Deficiency or of Transferee or Fiduciary Liability Required:** In a case commenced in the Court by a taxpayer, the jurisdiction of the Court depends upon the issuance by the Commissioner of a notice of deficiency in income, gift, or estate tax or in the taxes imposed on private foundations under Code Sections 4940 through 4945. In a case commenced in the Court by a transferee or fiduciary, the jurisdiction of the Court depends upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code Sections 6212, 6213, 6901.

(b) **Timely Petition Required:** In all cases, the jurisdiction of the Court also depends on the timely filing of a petition. See Code Sections 6213, 7502.

(c) **Contempt of Court:** Contempt of the Court may be punished by fine or imprisonment within the scope of Code Section 7456(d).

TITLE III.
COMMENCEMENT OF CASE; SERVICE AND FILING OF PAPERS; FORM AND STYLE OF PAPERS; APPEARANCE AND REPRESENTATION; COMPUTATION OF TIME

RULE 20. COMMENCEMENT OF CASE

(a) General: A case is commenced in the Court by filing a petition with the Court to redetermine a deficiency set forth in a notice of deficiency issued by the Commissioner, or to redetermine the liability of a transferee or fiduciary set forth in a notice of liability issued by the Commissioner to the transferee or fiduciary. See Rule 13, Jurisdiction.

(b) Filing Fee: A fee of $10 shall be paid at the time of filing a petition, unless the petitioner establishes to the satisfaction of the Court that he is unable to make such payment, in which case the Court may waive payment of the fee. For manner of payment, see Rule 11.

RULE 21. SERVICE OF PAPERS

(a) When Required: Except as otherwise required by these Rules or directed by the Court, all pleadings, motions, orders, decisions, notices, demands, briefs, appearances, or other similar documents or papers relating to a case, also referred to as the papers in a case, shall be served on each of the parties to the case other than the party who filed the paper.

(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. All other papers required to be served on a party shall also be served by the Clerk unless otherwise provided in these Rules or directed by the Court, or unless the original paper is filed with a certificate by a

party or his counsel that service of that paper has been made on the party to be served or his counsel. For the form of such certificate of service, see Form 13, Appendix I, p. 100. Such service may be made by mail directed to the party or his counsel at his last known address. Service by mail is complete upon mailing, and the date of such mailing shall be the date of such service. As an alternative to service by mail, service may be made by delivery to a party, or his counsel or authorized representative in the case of a party other than an individual (see Rule 24(b)). Service shall be made on the Commissioner by service on, or directed to, his counsel at the office address shown in his answer filed in the case or, if no answer has been filed, on the Chief Counsel, Internal Revenue Service, Washington, D. C. 20224. Service on a person other than a party shall be made in the same manner as service on a party, except as otherwise provided in these Rules or directed by the Court.

(2) *Counsel of Record:* Whenever under these Rules service is required or permitted to be made upon a party represented by counsel who has entered an appearance, service shall be made upon such counsel unless service upon the party himself is directed by the Court. Where more than one counsel appear for a party, service will be made only on that counsel whose appearance was first entered of record, unless that counsel designates in writing filed with the Court other counsel of record to receive service, in which event service will be made accordingly.

(3) *Writs and Process:* Service and execution of writs, process, or similar directives of the Court may be made by a United States marshal, by his deputy, or by a person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 147(c). The person making service shall make proof thereof to the Court promptly and in any event within the time in which the person served must respond. Failure to make proof of service does not affect the validity of the service.

RULE 22. FILING

Any pleadings or other papers to be filed with the Court must be filed with the Clerk in Washington, D. C., during

business hours, except that the Judge presiding at any trial or hearing may permit or require documents pertaining thereto to be filed at that particular session of the Court, or except as otherwise directed by the Court.

RULE 23. FORM AND STYLE OF PAPERS

(a) Caption, Date, and Signature Required: All papers filed with the Court shall have a caption, shall be dated, and shall be signed as follows:

(1) *Caption:* A proper caption shall be placed on all papers filed with the Court, and the requirements provided in Rule 32(a) shall be satisfied with respect to all such papers. All prefixes and titles, such as "Mrs." or "Dr.", shall be omitted from the caption. The full name and surname of each individual petitioner shall be set forth in the caption. The name of an estate or trust or other person for whom a fiduciary acts shall precede the fiduciary's name and title, as for example "Estate of John Doe, deceased, Richard Roe, Executor."

(2) *Date:* The date of signature shall be placed on all papers filed with the Court.

(3) *Signature:* The signature, either of the party or his counsel, shall be subscribed in writing to the original of every paper filed by or for that party with the Court, except as otherwise provided by these Rules. An individual rather than a firm name shall be used, except that the signature of a petitioner corporation or unincorporated association shall be in the name of the corporation or association by one of its active and authorized officers or members, as for example "John Doe, Inc., by Richard Roe, President." The name, mailing address, and telephone number of the party or his counsel shall be typed or printed immediately beneath the written signature. The mailing address of a signatory shall include a firm name if it is an essential part of the accurate mailing address.

(b) Number Filed: For each paper filed in Court, there shall be filed four conformed copies together with the signed original thereof, except as otherwise provided in these Rules. Where filing is in more than one case (as a motion to consolidate, or in cases already consolidated), the

number filed shall include one additional copy for each docket number in excess of one. As to stipulations, see Rule 91(b).

(c) **Legible Copies Required:** Papers filed with the Court may be prepared by any process, provided that all papers, including copies, filed with the Court are clear and legible.

(d) **Size and Style:** Typewritten papers shall be typed on only one side, unless produced by offset, mimeograph, multilith, photocopy, or similar process, and shall be on plain white paper, 8½ inches wide by 11 inches long, and weighing not less than 16 pounds to the ream, except that copies other than the original may be made on any weight paper. Printed papers shall be printed in 10-point or 12-point type, on good quality unglazed paper, 5⅞ inches wide by 9 inches long, and with double-leaded text and single-leaded quotations. All papers, whether typed or printed, shall have an inside margin not less than 1¼ inches wide.

(e) **Binding and Covers:** All papers shall be bound together on the left-hand side only, and, except in the case of briefs, shall have no backs or covers.

(f) **Citations:** All citations shall be underscored when typewritten, and shall be in italics when printed.

RULE 24. APPEARANCE AND REPRESENTATION

(a) **Appearance:** (1) *General:* Counsel may enter an appearance either by subscribing the petition or other initial pleading or document in accordance with subparagraph (2) hereof, or thereafter by filing an entry of appearance in accordance with subparagraph (3) hereof.

(2) *Appearance in Initial Pleading:* If the petition or other paper initiating the participation of a party in a case is subscribed by counsel admitted to practice before the Court, hat counsel shall be recognized as representing that party ınd no separate entry of appearance by him shall be ıecessary, provided that such initial paper shall also contain the mailing address of counsel and other information required for entry of appearance (see subparagraph (3) hereof). Thereafter counsel shall be required to notify the

Clerk of any changes in applicable information to the same extent as if he had filed a separate entry of appearance.

(3) *Subsequent Appearance:* Where counsel has not previously appeared, he shall file an entry of appearance in duplicate, signed by counsel individually, containing the name and docket number of the case, the name, mailing address, and telephone number of counsel so appearing, and a statement that counsel is admitted to practice before the Court. A separate entry of appearance, in duplicate, shall be filed for each additional docket number in which counsel shall appear. The entry of appearance shall be substantially in the form set forth in Appendix I, p. 90. The Clerk shall be given prompt written notice, filed in duplicate for each docket number, of any change in the foregoing information.

(4) *Counsel Not Admitted to Practice:* No entry of appearance by counsel not admitted to practice before this Court will be effective until he shall have been admitted, but he may be recognized as counsel in a pending case to the extent permitted by the Court and then only where it appears that he can and will be promptly admitted. For the procedure for admission to practice before the Court, see Rule 200.

(b) Personal Representation Without Counsel: In the absence of appearance by counsel, a party will be deemed to appear for himself. An individual party may represent himself. A corporation or an unincorporated association may be represented by an authorized officer of the corporation or by an authorized member of the association. An estate or trust may be represented by a fiduciary thereof. Any such person shall state, in the initial pleading or other paper filed by or for the party, his name, address, and telephone number, and thereafter shall promptly notify the Clerk in writing, in duplicate for each docket number involving that party, of any change in that information.

(c) Withdrawal of Counsel: Counsel of record desiring to withdraw his appearance, or any party desiring to withdraw the appearance of counsel of record for him, must file a motion with the Court requesting leave therefor, and showing that prior notice of the motion has been given by

him to his client, or his counsel, as the case may be. The Court may, in its discretion, deny such motion.

(d) **Death of Counsel:** If counsel of record dies, the Court shall be so notified, and other counsel may enter an appearance in accordance with this Rule.

(e) **Change in Party or Authorized Representative or Fiduciary:** Where (i) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in such representative or fiduciary, or (ii) there is a substitution of parties in a pending case, counsel subscribing the motion resulting in the Court's approval of the change or substitution shall thereafter be deemed first counsel of record for the new representative or party.

RULE 25. COMPUTATION OF TIME

(a) **Computation:** In computing any period of time prescribed or allowed by these Rules or by direction of the Court or by any applicable statute which does not provide otherwise, the day of the act, event, or default from which a designated period of time begins to run shall not be included. In the event of service made by mail, a period of time computed with respect to the service shall begin on the day after the date of mailing. Saturdays, Sundays, and all legal holidays shall be counted; provided, however, that, when the period prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays in the *District of Columbia* shall be excluded in the computation; and, provided further, that the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday in the *District of Columbia,* in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such a legal holiday. When such legal holiday falls on a Sunday, the next day shall be considered a holiday; and, when such a legal holiday falls on a Saturday, the preceding day shall be considered a holiday. For computation of the period within which to file a petition with the Court to redetermine a deficiency or liability, see Code Sections 6213, 7502.

(b) District of Columbia Legal Holidays: The legal holidays within the District of Columbia, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows:

New Year's Day — January 1
Inauguration Day — Every fourth year
Washington's Birthday — Third Monday in February
Memorial Day — Last Monday in May
Independence Day — July 4
Labor Day — First Monday in September
Columbus Day — Second Monday in October
Veterans Day — Fourth Monday in October
Thanksgiving Day — Fourth Thursday in November
Christmas Day — December 25

(c) Enlargement or Reduction of Time: Unless precluded by statute, the Court in its discretion may make longer or shorter any period provided by these Rules. As to continuances, see Rule 134. Where a motion is made concerning jurisdiction or the sufficiency of a pleading, the time for filing a response to that pleading shall begin to run from the date of service of the order disposing of the motion by the Court, unless the Court shall direct otherwise. Where the dates for filing briefs are fixed, an extension of time for filing a brief shall correspondingly extend the time for filing any other brief due at the same time and for filing succeeding briefs, unless the Court shall order otherwise. The period fixed by statute, within which to file a petition with the Court to redetermine a deficiency or liability, cannot be extended by the Court.

(d) Miscellaneous: With respect to computation of time, see also Rule 3(d) (definition), Rule 10(d) (business hours of the Court), Rule 13(b) (filing of petition), and Rule 134 (continuances).

TITLE IV. PLEADINGS

RULE 30. PLEADINGS ALLOWED

There shall be a petition and an answer, and, where required under these Rules, a reply. No other pleading shall be allowed, except that the Court may permit or direct some other responsive pleading.

RULE 31. GENERAL RULES OF PLEADING

(a) **Purpose:** The purpose of the pleadings is to give the parties and the Court fair notice of the matters in controversy and the basis for their respective positions.

(b) **Pleading to be Concise and Direct:** Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading are required.

(c) **Consistency:** A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as he has regardless of consistency or the grounds on which based. All statements shall be made subject to the signature requirements of Rules 23(a)(3) and 33.

(d) **Construction of Pleadings:** All pleadings shall be so construed as to do substantial justice.

RULE 32. FORM OF PLEADINGS

(a) **Caption; Names of Parties:** Every pleading shall contain a caption setting forth the name of the Court (United States Tax Court), the title of the case, the docket number after it becomes available (see Rule 35), and a

designation to show the nature of the pleading. In the petition, the title of the case shall include the names of all parties, but in other pleadings it is sufficient to state the name of the first party with an appropriate indication of other parties.

(b) Separate Statement: All averments of claim or defense, and all statements in support thereof, shall be made in separately designated paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single item or a single set of circumstances. Such paragraph may be referred to by that designation in all succeeding pleadings. Each claim and defense shall be stated separately whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits: Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Other Provisions: With respect to other provisions relating to the form and style of papers filed with the Court, see Rule 23.

RULE 33. SIGNING OF PLEADINGS

(a) Signature: Each pleading shall be signed in the manner provided in Rule 23. Where there is more than one attorney of record, the signature of only one is required. Except when otherwise specifically directed by the Court, pleadings need not be verified or accompanied by affidavit.

(b) Effect of Signature: The signature of counsel or a party constitutes a certificate by him that he has read the pleading; that, to the best of his knowledge, information, or belief, there is good ground to support it; that it is not frivolous; and that it is not interposed for delay. The signature of counsel also constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. If a pleading is not signed, or is signed with intent to defeat the purpose of this Rule, it may be stricken, and the action may proceed as though the pleading had not been filed. Similar action may be taken if

scandalous or indecent matter is inserted. For a willfu violation of this Rule, counsel may be subjected t appropriate disciplinary action.

RULE 34. PETITION

(a) General: The petition shall be substantially i accordance with Form 1 shown in Appendix I, p. 88, an shall comply with the requirements of these Rules relating t pleadings. Ordinarily, a separate petition shall be filed wit respect to each notice of deficiency or each notice of liability However, a single petition may be filed seeking redetermination with respect to all notices of deficiency o liability directed to one person alone or to him and one o more other persons, except that the Court may require a severance and a separate case to be maintained with respect to one or more of such notices. Where the notice of deficiency or liability is directed to more than one person, each such person desiring to contest it shall file a petition on his own behalf, either separately or jointly with any such other person, and each such person must satisfy all the requirements of this Rule with respect to himself in order for the petition to be treated as filed by or for him. The petition shall be complete, so as to enable ascertainment of the issues intended to be presented. No telegram, cablegram, radiogram, telephone call, or similar communication will be recognized as a petition. Failure of the petition to satisfy applicable requirements may be ground for dismissal of the case. As to the joinder of parties, see Rule 61; and as to the effect of misjoinder of parties, see Rule 62.

(b) Content of Petition: The petition shall contain (see Form 1, Appendix I, p. 88):

(1) The petitioner's name and legal residence, in the case of a petitioner other than a corporation; in the case of a corporate petitioner, its name and principal place of business or principal office or agency; and, in all cases, the office of the Internal Revenue Service with which the tax return for the period in controversy was filed. The legal residence, principal place of business, or principal office or

agency shall be stated as of the date of filing the petition. In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition.

(2) The date of mailing of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court, and the city and State of the office of the Internal Revenue Service which issued the notice.

(3) The amount of the deficiency or liability, as the case may be, determined by the Commissioner; the nature of the tax; the year or years or other periods for which the determination was made; and, if different from the Commissioner's determination, the approximate amount of taxes in controversy.

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignment of errors shall be deemed to be conceded. Each assignment of error shall be separately lettered.

(5) Clear and concise lettered statements of the facts on which petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(6) A prayer setting forth relief sought by the petitioner.

(7) The signature of each petitioner or his counsel. If the petition is filed in the name of more than one petitioner, it shall be signed by each such petitioner or his counsel.

(8) A copy of the notice of deficiency or liability, as the case may be, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of deficiency or liability or accompanying statement incorporates by reference any prior notices or other material furnished by the Internal Revenue Service, such parts thereof as are material to the

issues raised by the assignments of error likewise shall be appended to the petition.

RULE 35. ENTRY ON DOCKET

Upon receipt of the petition by the Clerk, the case will be entered upon the docket and assigned a number, and the parties will be notified thereof by the Clerk. The docket number shall be placed by the parties on all papers thereafter filed in the case, and shall be referred to in all correspondence with the Court.

RULE 36. ANSWER

(a) **Time to Answer or Move:** The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner shall have like periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(b) **Form and Content:** The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition; however, if the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, he shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(c) **Effect of Answer:** Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

RULE 37. REPLY

(a) Time to Reply or Move: The petitioner shall have 45 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer, the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(b) Form and Content: In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects the requirements of pleading applicable to the answer provided in Rule 36(b) shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(c) Effect of Reply or Failure Thereof: Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply, shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Commissioner, within 45 days after expiration of the time for filing the reply, files a motion for an order that specified allegations in the answer be deemed admitted. That motion will be noticed for a hearing, at which the motion may be granted unless on or before the date thereof the required reply has been filed.

(d) New Material: Any new material contained in the reply shall be deemed to be denied.

RULE 38. JOINDER OF ISSUE

A case shall be deemed at issue upon the filing of answer, unless a reply is required under Rule 37, in wh event it shall be deemed at issue upon the filing of a repl the entry of an order disposing of a motion under Rule 3 or the expiration of the period specified in Rule 37(c) in c the Commissioner fails to move.

RULE 39. PLEADING SPECIAL MATTERS

A party shall set forth in his pleading any mat constituting an avoidance or affirmative defense, includi res judicata, collateral estoppel, estoppel, waiver, dure fraud, and the statute of limitations. A mere denial in responsive pleading will not be sufficient to raise any su issue.

RULE 40. DEFENSES AND OBJECTIONS MADI BY PLEADING OR MOTION

Every defense, in law or fact, to a claim for relief in a pleading shall be asserted in the responsive pleading there if one is required, except that the following defenses may, the option of the pleader, be made by motion: (a) lack jurisdiction; and (b) failure to state a claim upon which reli can be granted. If a pleading sets forth a claim for relief which the adverse party is not required to serve a responsi pleading, he may assert at the trial any defense in law or fa to that claim for relief. If, on a motion asserting failure t state a claim on which relief can be granted, matters outsid the pleading are to be presented, the motion shall be treate as one for summary judgment and disposed of as provide in Rule 121, and the parties shall be given an opportunity t present all material made pertinent to a motion under Rul 121.

RULE 41. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) **Amendments:** A party may amend his pleading onc as a matter of course at any time before a responsiv

pleading is served. If the pleading is one to which no responsive pleading is permitted and the case has not been placed on a trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given freely when justice so requires. No amendment shall be allowed after expiration of the time for filing the petition, however, which would involve conferring jurisdiction on the Court over a matter which otherwise would not come within its jurisdiction under the petition as then on file. A motion for leave to amend a pleading shall state the reasons for the amendment and shall be accompanied by the proposed amendment. See Rules 36(a) and 37(a) for time for responding to amended pleadings.

(b) Amendments to Conform to the Evidence: (1) *Issues Tried by Consent:* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The Court, upon motion of any party at any time, may allow such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues; but failure to amend does not affect the result of the trial of these issues.

(2) *Other Evidence:* If evidence is objected to at the trial on the ground that it is not within the issues raised by pleadings, the Court may receive the evidence and at any time allow the pleadings to be amended to conform to the proof, and shall do so freely when justice so requires and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his position on the merits.

(3) *Filing:* The amendment or amended pleadings permitted under this paragraph (b) shall be filed with the Court at the trial or shall be filed with the Clerk at Washington, D. C., within such time as the Court may fix

(c) Supplemental Pleadings: Upon motion of a party the Court may, upon such terms as are just, permit him to file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date

of the pleading sought to be supplemented. Permission ma be granted even though the original pleading is defective i its statements of a claim for relief or defense. If the Cou deems it advisable that the adverse party plead to th supplemental pleading, it shall so direct, specifying the tim therefor.

(d) **Relation Back of Amendments:** When a amendment of a pleading is permitted, it shall relate back t the time of filing of that pleading, unless the Court shal order otherwise either on motion of a party or on its ow initiative.

TITLE V. MOTIONS

RULE 50. GENERAL REQUIREMENTS

(a) Form and Content of Motion: An application to the Court for an order shall be by motion in writing, which shall state with particularity the grounds therefor and shall set forth the relief or order sought. If there is no objection to a motion in whole or in part, the absence of such objection shall be stated on the motion, preferably over the signature of the other party or his counsel. Unless the Court directs otherwise, motions made during a hearing or trial need not be in writing. The rules applicable to captions, signing, and other matters of form and style of pleadings apply to all motions. See Rules 23, 32, and 33.

(b) Disposition of Motions: A motion may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take action after directing that a written response be filed. In that event, the motion shall be served upon the opposing party, who shall file such response within such period as the Court may direct. Written response to a motion shall conform to the same requirements of form and style as apply to motions.

(2) The Court may take action after directing a hearing, which normally will be held in Washington, D. C. The Court may, on its own motion or upon the written request of any party to the motion, direct that the hearing be held at some other location which serves the convenience of the parties and the Court.

(3) The Court may take such action as the Court in its discretion deems appropriate, on such prior notice, if any, which the Court may consider reasonable. The action of the Court may be taken with or without written response, hearing, or attendance of a party to the motion at the hearing.

(c) **Attendance at Hearings:** If a motion is noticed for hearing, a party to the motion may, prior to or at the time for such hearing, submit a written statement of his position together with any supporting documents. Such statement may be submitted in lieu of or in addition to attendance at the hearing.

(d) **Defects in Pleading:** Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

(e) **Postponement of Trial:** The filing of a motion shall not constitute cause for postponement of a trial. With respect to motions for continuance, see Rule 134.

(f) **Service of Motions:** The rules applicable to service of pleadings apply to service of motions. See Rule 21.

RULE 51.
MOTION FOR MORE DEFINITE STATEMENT

(a) **General:** If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

(b) **Penalty for Failure of Response:** The Court may strike the pleading to which the motion is directed or may make such other order as it deems just, if the required response is not made within such period as the Court may direct.

RULE 52. MOTION TO STRIKE

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 30 days after the service of the pleading, or upon the Court's own initiative at any time, the Court may order stricken from any pleading

any insufficient claim or defense or any redundant, immaterial, impertinent, frivolous, or scandalous matter. In like manner and procedure, the Court may order stricken any such objectionable matter from briefs, documents, or any other papers or responses filed with the Court.

RULE 53. MOTION TO DISMISS

A case may be dismissed for cause upon motion of a party or upon the Court's initiative.

RULE 54.
TIMELY FILING AND JOINDER OF MOTIONS

Motions must be made timely, unless the Court shall permit otherwise. Generally motions shall be separately stated and not joined together, except that motions under Rules 51 and 52 directed to the same pleading or other paper may be joined.

RULE 55. MISCELLANEOUS

For reference in the Rules to other motions, see Rules 25(c) (extension of time), 40 (defenses made by motion), 41 (amendment of pleadings), 63 (substitution of parties), 71(c) (answers to interrogatories), 81(b) (depositions), 90(d) (requests for admissions), 91(f) (stipulations), 121(a) (summary judgment), 123(c) (setting aside default or dismissal), 134 (continuances), 140(d) (place of trial), 141 (consolidation and separation), 151(c) (delinquent briefs), 161 (reconsideration), and 162 (vacating or revising decision).

TITLE VI. PARTIES

RULE 60. PROPER PARTIES; CAPACITY

(a) **Petitioner:** A case shall be brought by and in the name of the person against whom the Commissioner determined the deficiency (in the case of a notice of deficiency) or liability (in the case of a notice of liability), or by and with the full descriptive name of the fiduciary entitled to institute a case on behalf of such person. See Rule 23(a)(1). A case timely brought shall not be dismissed on the ground that it is not properly brought on behalf of a party until a reasonable time has been allowed after objection for ratification by such party of the bringing of the case; and such ratification shall have the same effect as if the case had been properly brought by such party. Where the deficiency or liability is determined against more than one person in the notice by the Commissioner, only such of those persons who shall duly act to bring a case shall be deemed a party or parties.

(b) **Respondent:** The Commissioner shall be named the respondent.

(c) **Capacity:** The capacity of an individual, other than one acting in a fiduciary or other representative capacity, to engage in litigation in the Court shall be determined by the law of his domicile. The capacity of a corporation to engage in such litigation shall be determined by the law under which it was organized. The capacity of a fiduciary or other representative to litigate in the Court shall be determined in accordance with the law of the jurisdiction from which he derives his authority.

(d) **Infants or Incompetent Persons:** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may bring a case or defend in

the Court on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, he may act by his next friend or by a guardian ad litem. Where a party attempts to represent himself and, in the opinion of the Court, there is a serious question as to his competence to do so, the Court, if it deems justice so requires, may continue the case until appropriate steps have been taken to obtain an adjudication of the question by a court having jurisdiction so to do, or may take such other action as it deems proper.

RULE 61. PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder: Any person, to whom a notice of deficiency or notice of liability has been issued, may join with any other such person in filing a petition in the Court which is timely with respect to the notice issued to each joining party. After a petition has been filed, any such person may join therein with the consent of all the petitioners and the permission of the Court. Joinder is permitted only where all or part of each participating party's tax liability arises out of the same transaction, occurrence, or series of transactions and occurrences and, in addition, there is a common question of law or fact relating to those parties. As to the filing of a joint petition, see also Rule 34.

(b) Severance or Other Orders: The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party; or may order separate trials or make other orders to prevent delay or prejudice; or may limit the trial to the claims of one or more parties, either dropping other parties from the case on such terms as are just or holding in abeyance the proceedings with respect to them. Any claim by or against a party may be severed and proceeded with separately. See also Rule 141(b).

RULE 62. MISJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of a case. The Court may order a severance on such terms as are just. See Rule 61(b).

RULE 63. SUBSTITUTION OF PARTIES; CHANGE OR CORRECTION IN NAME

(a) **Death:** If a petitioner dies, the Court, on motion of a party or the decedent's successor or representative or on its own initiative, may order substitution of the proper parties.

(b) **Incompetency:** If a party becomes incompetent, the Court, on motion of a party or the incompetent's representative or on its own initiative, may order his representative to proceed with the case.

(c) **Successor Fiduciaries or Representatives:** On motion made where a fiduciary or representative is changed, the Court may order substitution of the proper successors.

(d) **Other Cause:** The Court, on motion of a party or on its own initiative, may order the substitution of proper parties for other cause.

(e) **Change or Correction in Name:** On motion of a party or on its own initiative, the Court may order a change of or correction in the name or title of a party.

TITLE VII. DISCOVERY

RULE 70. GENERAL PROVISIONS

(a) General: (1) *Methods and Limitations of Discovery:* In conformity with these Rules, a party may obtain discovery by written interrogatories (Rule 71) or by production of documents or things (Rules 72 and 73). However, the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules. Discovery is not available under these Rules through depositions, which may be taken only for the limited purpose and under the conditions provided in Title VIII. See Rules 91(a) and 100 regarding relationship of discovery to stipulations.

(2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38), and shall be completed, unless otherwise authorized by the Court, no later than 75 days prior to the date set for call of the case from a trial calendar.

(b) Scope of Discovery: The information or response sought through discovery may concern any matter not privileged and which is relevant to the subject matter involved in the pending case. It is not ground for objection that the information or response sought will be inadmissible at the trial, if that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of the burden of proof involved. If the information or response sought is otherwise proper, it is not objectionable merely because the information or response involves an opinion or contention that relates to fact or to the application of law to fact. But the Court may order that the information or response sought need not be furnished or

made until some designated time or a particular stage has been reached in the case or until a specified step has been taken by a party.

(c) Party's Statements: Upon request to the other party and without any showing except the assertion in writing that he lacks and has no convenient means of obtaining a copy of a statement made by him, a party shall be entitled to obtain a copy of any such statement which has a bearing on the subject matter of the case and is in the possession or control of another party to the case.

(d) Use in Case: The answers to interrogatories, things produced in response to a request, or other information or responses obtained under Rules 71, 72, and 73, may be used at trial or in any proceeding in the case prior or subsequent to trial, to the extent permitted by the rules of evidence. Such answers or information or responses will not be considered as evidence until offered and received as evidence. No objections to interrogatories or the answers thereto, or to a request to produce or the response thereto, will be considered unless made to the Court within the time prescribed, except that the objection that an interrogatory or answer would be inadmissible at trial is preserved even though not made prior to trial.

(e) Other Applicable Rules: For Rules concerned with the frequency and timing of discovery in relation to other procedures, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

RULE 71. INTERROGATORIES

(a) Availability: Any party may, without leave of Court, erve upon any other party written interrogatories to be nswered by the party served or, if the party served is a ublic or private corporation or a partnership or association r governmental agency, by an officer or agent who shall furnish such information as is available to the party.

(b) Answers: All answers shall be made in good faith nd as completely as the answering party's information shall ermit. However, the answering party is required to make

reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless he states that he has made reasonable inquiry and that information known or readily obtainable by him is insufficient to enable him to answer the substance of the interrogatory.

(c) **Procedure:** Each interrogatory shall be answered separately and fully under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of the answer. The answers are to be signed by the person making them, and the objections shall be signed by the party or his counsel. The party, on whom the interrogatories have been served, shall serve a copy of his answers, and objections if any, upon the propounding party within 45 days after service of the interrogatories upon him. The Court may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to move for an order with respect to any objection or other failure to answer an interrogatory, and in that connection the moving party shall annex to his motion the interrogatories, with proof of service on the other party, together with the answers and objections if any.

(d) **Experts:** By means of written interrogatories in conformity with this Rule, a party may require any other party (i) to identify each person whom the other party expects to call as an expert witness at the trial of the case, giving his name, address, vocation or occupation, and a statement of his qualifications, and (ii) to state the subject matter and the substance of the facts and opinions to which the expert is expected to testify, and give a summary of the grounds for each such opinion.

(e) **Option to Produce Business Records:** Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the

interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

RULE 72.
PRODUCTION OF DOCUMENTS AND THINGS

(a) **Scope:** Any party may, without leave of Court, serve on any other party a request to:

(1) Produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things, to the extent that any of the foregoing items are in the possession, custody or control of the party on whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) **Procedure:** The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection

shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file an appropriate motion with the Court.

(c) **Foreign Petitioners:** For production of records by foreign petitioners, see Code Section 7456(b).

RULE 73. EXAMINATION BY TRANSFEREES

(a) **General:** Upon application to the Court and subject to these Rules, a transferee of property of a taxpayer shall be entitled to examine before trial the books, papers, documents, correspondence, and other evidence of the taxpayer or of a preceding transferee of the taxpayer's property, provided that the transferee making the application is a petitioner seeking redetermination of his liability in respect of the taxpayer's tax liability (including interest, additional amounts, and additions provided by law). Such books, papers, documents, correspondence, and other evidence may be made available to the extent that the same shall be within the United States, will not result in undue hardship to the taxpayer or preceding transferee, and in the opinion of the Court is necessary in order to enable the transferee to ascertain the liability of the taxpayer or preceding transferee.

(b) **Procedure:** A petitioner desiring an examination permitted under paragraph (a), shall file an application with the Court, showing that he is entitled to such an examination, describing the documents and other materials sought to be examined, giving the names and addresses of the persons to produce the same, and stating a reasonable time and place where the examination is to be made. If the Court shall determine that the applicable requirements are satisfied, it shall issue a subpoena, signed by a Judge, directed to the appropriate person and ordering the production at a designated time and place of the documents and other materials involved. If the person to whom the subpoena is directed shall object thereto or to the production involved, he shall file his objections and the reasons therefor in writing with the Court, and serve a copy

thereof upon the applicant, within 10 days after service of the subpoena or on or before such earlier time as may be specified in the subpoena for compliance. To obtain a ruling on such objections, the applicant for the subpoena shall file an appropriate motion with the Court. In all respects not inconsistent with the provisions of this Rule, the provisions of Rule 72(b) shall apply where appropriate.

(c) Scope of Examination: The scope of the examination authorized under this Rule shall be as broad as is authorized under Rule 72(a), including, for example, the copying of such documents and materials.

TITLE VIII. DEPOSITIONS

RULE 80. GENERAL PROVISIONS

(a) **General:** On complying with the applicable requirements, depositions may be taken in a pending case before trial (Rule 81), or in anticipation of commencing a case in this Court (Rule 82), or in connection with the trial (Rule 83). Depositions may be taken only for the purpose of making testimony or any document or thing available as evidence in the circumstances herein authorized by the applicable Rules. These Rules do not provide for taking depositions for discovery purposes.

(b) **Other Applicable Rules:** For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

RULE 81. DEPOSITIONS IN PENDING CASE

(a) **Depositions to Perpetuate Testimony:** A party to a case pending in the Court, who desires to perpetuate his own testimony or that of any other person or to preserve any document or thing, shall file an application pursuant to these Rules for an order of the Court authorizing such party to take a deposition for such purpose. Such depositions shall be taken only where there is a substantial risk that the person or document or thing involved will not be available at the trial of the case, and shall relate only to testimony or document or thing which is not privileged and is material to a matter in controversy.

(b) **The Application:** (1) *Content of Application:* The application to take a deposition pursuant to paragraph (a) of this Rule shall be signed by the party seeking the deposition

or his counsel, and shall show the following:

(i) the names and addresses of the persons to be examined;

(ii) the reasons for deposing those persons rather than waiting to call them as witnesses at the trial;

(iii) the substance of the testimony which the party expects to elicit from each of those persons;

(iv) a statement showing how the proposed testimony or document or thing is material to a matter in controversy;

(v) a statement describing any books, papers, documents, or tangible things to be produced at the deposition by the persons to be examined;

(vi) the time and place proposed for the deposition;

(vii) the officer before whom the deposition is to be aken;

(viii) the date on which the petition was filed with the ;ourt, and whether the pleadings have been closed and the ase placed on a trial calendar; and

(ix) any provision desired with respect to payment of :xpenses, fees, and charges relating to the deposition (see paragraph (g) of this Rule, and Rule 103). The application shall also have annexed to it a copy of the questions to be propounded, if the deposition is to be taken on written questions. For the form of application to take a deposition, see Appendix I, p. 93.

(2) *Filing and Disposition of Application:* The application may be filed with the Court at any time after the case is docketed in the Court, but must be filed at least 45 days prior 'o the date set for the trial of the case. The deposition must)e completed and filed with the Court at least 10 days prior o the trial date. The application and a conformed copy hereof, together with an additional conformed copy for :ach additional docket number involved and an additional conformed copy for each person to be served, shall be filed with the Clerk of the Court, who shall serve a copy on each of the other parties to the case as well as on such other persons who are to be examined pursuant to the application. Such other parties or persons shall file their objections or other response, with the same number of copies, within 15 days after such service of the application. A hearing on the

application will be held only if directed by the Court. Unless the Court shall determine otherwise for good cause shown, an application to take a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set. If the Court approves the taking of a deposition, it will issue an order which will include in its terms the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken.

(c) **Designation of Person to Testify:** The party seeking to take a deposition may name, as the deponent in his application, a public or private corporation or a partnership or association or governmental agency, and shall designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(d) **Use of Stipulation:** The parties or their counsel may execute and file a stipulation to take a deposition by agreement instead of filing an application as hereinabove provided. Such a stipulation shall be filed with the Court in duplicate, and shall contain the same information as is required in items (i), (vi), (vii), and (ix) of Rule 81(b)(1), but shall not require the approval or an order of the Court unless the effect is to delay the trial of the case. A deposition taken pursuant to a stipulation shall in all respects conform to the requirements of these Rules.

(e) **Person Before Whom Deposition Taken:** (1) *Domestic Depositions:* Within the United States or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States (see Code Section 7622) or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and to take such testimony.

(2) *Foreign Depositions:* In a foreign country, depositio may be taken on notice (i) before a person authorized administer oaths or affirmations in the place in which t examination is held, either by the law thereof or by the law the United States, or (ii) before a person commissioned the Court, and a person so commissioned shall have tl power, by virtue of his commission, to administer a necessary oath and take testimony, or (iii) pursuant to letter rogatory. A commission or a letter rogatory shall issued on application and notice and on terms that are ju and appropriate. It is not requisite to the issuance of commission or a letter rogatory that the taking of tl deposition in any other manner is impracticable inconvenient; and both a commission and a letter rogato may be issued in proper cases. A notice or commission m designate the person before whom the deposition is to b taken either by name or descriptive title. A letter rogato may be addressed "To The Appropriate Authority in [her name the country]." Evidence obtained by deposition or i response to a letter rogatory need not be excluded merel for reason that it is not a verbatim transcript or that th testimony was not taken under oath or for any simila departure from the requirements for depositions take within the United States under these Rules.

(3) *Disqualification for Interest:* No deposition shall b taken before a person who is a relative or employee o counsel of any party, or is a relative or employee or associat of such counsel, or is financially interested in the action However, on consent of all the parties or their counsel, deposition may be taken before such person, provided tha the relationship of that person and the waiver shall be se forth in the certificate of return to the Court.

(f) Taking of Deposition: (1) *Arrangements:* Al arrangements necessary for taking of the deposition shall b made by the party filing the application or, in the case of stipulation, by such other persons as may be agreed upon b the parties.

(2) *Procedure:* Attendance by the persons to be examine may be compelled by the issuance of a subpoena, an production likewise may be compelled of exhibits required

in connection with the testimony being taken. The officer before whom the deposition is taken shall first put the witness on oath (or affirmation) and shall personally, or by someone acting under his direction and in his presence, record accurately and verbatim the questions asked, the answers given, the objections made, and all matters transpiring at the taking of the deposition which bear on the testimony involved. Examination and cross-examination of witnesses, and the marking of exhibits, shall proceed as permitted at trial. All objections made at the time of examination shall be noted by the officer upon the deposition. Evidence objected to, unless privileged, shall be taken subject to the objections made. If an answer is improperly refused and as a result a further deposition is taken by the interrogating party, the objecting party or deponent may be required to pay all costs, charges, and expenses of that deposition to the same extent as is provided in paragraph (g) of this Rule where a party seeking to take a deposition fails to appear at the taking of the deposition. At the request of either party, a prospective witness at the deposition, other than a person acting in an expert or advisory capacity for a party, shall be excluded from the room in which, and during the time that, the testimony of another witness is being taken; and if such person remains in the room or within hearing of the examination after such request has been made, he shall not thereafter be permitted to testify, except by the consent of the party who requested his exclusion or by permission of the Court.

(g) Expenses: (1) *General:* The party taking the deposition shall pay all the expenses, fees, and charges of the witness whose deposition is taken by him, any charges of the officer presiding at or recording the deposition other than for copies of the deposition, and any expenses involved in providing a place for the deposition. The party taking the deposition shall pay for a copy of the deposition to be filed in Court; and, upon payment of reasonable charges therefor, the officer shall also furnish a copy of the deposition to any party or the deponent. By stipulation between the parties or on order of the Court, provision may be made for any costs, charges, or expenses relating to the deposition.

(2) *Failure to Attend or to Serve Subpoena:* If the part authorized to take a deposition fails to attend and proceed therewith and another party attends in person or b attorney pursuant to the arrangements made, the Cour may order the former party to pay to such other party th reasonable expenses incurred by him and his attorney i attending, including reasonable attorney's fees. If the part authorized to take a deposition of a witness fails to serve subpoena upon him and the witness because of such failur does not attend, and if another party attends in person or b attorney because he expects the deposition of that witness t be taken, the Court may order the former party to pay t such other party the reasonable expenses incurred by hir and his attorney attending, including reasonable attorney' fees.

(h) Execution and Return of Deposition (1) *Submission to Witness; Changes; Signing:* When the testimony is fully transcribed, the deposition shall be ubmitted to the witness for examination and shall be read to r by him, unless such examination and reading are waived y the witness and by the parties. Any changes in form or ubstance, which the witness desires to make, shall be ntered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless the Court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. As to correction of errors see Rules 85 and 143(c).

(2) *Form:* The deposition shall show the docket number and caption of the case as they appear in the Court's records, the place and date of taking the deposition, the name of the witness, the party by whom called, the names of counsel

present and whom they represent. The pages of the deposition shall be securely fastened. Exhibits shall be carefully marked, and when practicable annexed to, and in any event returned with, the deposition, unless, upon motion to the Court, a copy shall be permitted as a substitute after an opportunity is given to all interested parties to examine and compare the original and the copy. The officer shall execute and attach to the deposition a certificate in accordance with Form 7 shown in Appendix I, p. 94.

(3) *Return of Deposition:* Unless otherwise authorized or directed by the Court, the officer shall enclose the original deposition and exhibits, together with such other copies for the parties and deponent as to which provision for payment therefor shall have been made, in a sealed packet with registered or certified postage or other transportation charges prepaid, and shall deliver the same to the Clerk of the Court or shall direct and forward the same to the United States Tax Court, Box 70, Washington, D. C. 20044. Upon written request of a party or his counsel, the officer may deliver a copy to him or his representative in lieu of sending it to the Court, in which event the officer shall attach to his return to the Court that written request and shall state in his certificate the fact of delivery by him of such copy or copies.

(i) Use of Deposition: At the trial or in any other proceeding in the case, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions

(1) The deposition may be used by any party for th purpose of contradicting or impeaching the testimony o deponent as a witness.

(2) The deposition of a party may be used by an advers party for any purpose.

(3) The deposition may be used for any purpose if t Court finds: (A) that the witness is dead; or (B) that t witness is at such distance from the place of trial that it is n practicable for him to attend, unless it appears that t

absence of the witness was procured by the party seeking to use the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to obtain attendance of the witness at the trial, as to make it desirable in the interests of justice, to allow the deposition to be used; or (E) that such exceptional circumstances exist, in regard to the absence of the witness at the trial, as to make it desirable in the interests of justice, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

As to introduction of deposition in evidence, see Rule 143(c).

RULE 82. DEPOSITIONS BEFORE COMMENCEMENT OF CASE

A person, who desires to perpetuate his own testimony or that of another person or to preserve any document or thing regarding any matter that may be cognizable in this Court, may file an application with the Court to take a deposition for such purpose. The application shall be entitled in the name of the applicant, shall otherwise be in the same style and form as apply to a motion filed with the Court, and shall show the following: (1) The facts showing that the applicant expects to be a party to a case cognizable in this Court but is at present unable to bring it or cause it to be brought. (2) The subject matter of the expected action and his interest therein. (3) All matters required to be shown in an application under paragraph (b)(1) of Rule 81 except item (viii) thereof. Such an application will be entered upon a special docket, and service thereof and pleading with respect thereto will proceed subject to the requirements otherwise applicable to a motion. A hearing on the application may be required by the Court. If the Court is satisfied that the perpetuation of the testimony or the preservation of the document or thing may prevent a failure

or delay of justice, it will make an order authorizing the deposition and including such other terms and conditions as it may deem appropriate consistently with these Rules. If the deposition is taken, and if thereafter the expected case is commenced in this Court, the deposition may be used in that case subject to the Rules which would apply if the deposition had been taken after commencement of the case.

RULE 83. DEPOSITIONS AFTER COMMENCEMENT OF TRIAL

Nothing in these Rules shall preclude the taking of a deposition after trial has commenced in a case, upon approval or direction of the Court. The Court may impose such conditions to the taking of the deposition as it may find appropriate and, with respect to any aspect not provided for by the Court, Rule 81 shall govern to the extent applicable.

RULE 84. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) **Use of Written Questions:** A party may make an application to the Court to take a deposition, otherwise authorized under Rules 81, 82, or 83, upon written questions rather than oral examination. The provisions of those Rules shall apply in all respects to such a deposition except to the extent clearly inapplicable or otherwise provided in this Rule. Unless there is special reason for taking the deposition on written questions rather than oral examination; the Court will deny the application, without prejudice to seeking approval of the deposition upon oral examination. The taking of depositions upon written questions is not favored, except when the deposition is to be taken in a foreign country, in which event the deposition must be taken on written questions unless otherwise directed by the Court for good cause shown.

(b) **Procedure:** An application under paragraph (a) hereof shall have the written questions annexed thereto. With respect to such application, the 15-day period for filing objections prescribed by paragraph (b)(2) of Rule 81 is extended to 20 days, and within that 20-day period the

objecting or responding party shall also file with the Court any cross-questions which he may desire to be asked at the taking of the deposition. The applicant shall then file any objections to the cross-questions, as well as any redirect questions, within 15 days after service on him of the cross-questions. Within 15 days after service of the redirect questions on the other party, he shall file with the Court any objections to the redirect questions, as well as any recross questions which he may desire to be asked. No objection to a written question will be considered unless it is filed with the Court within such applicable time. An original and five copies of all questions and objections shall be filed with the Clerk of the Court, who will make service thereof on the opposite party. The Court for good cause shown may enlarge or shorten the time in any respect.

(c) **Taking of Deposition:** The officer taking the deposition shall propound all questions to the witness in their proper order. The parties and their counsel may attend the taking of the deposition but shall not participate in the deposition proceeding in any manner.

(d) **Filing:** The execution and filing of the deposition shall conform to the requirements of paragraph (h) of Rule 81.

RULE 85.
OBJECTIONS, ERRORS, AND IRREGULARITIES

(a) **As to Initiating Deposition:** All errors and irregularities in the procedure for obtaining approval for the taking of a deposition are waived, unless made in writing within the time for making objections or promptly where no time is prescribed.

(b) **As to Disqualification of Officer:** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived, unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) **As to Use:** In general, an objection may be made at the trial or hearing to use of a deposition, in whole or in part as evidence, for any reason which would require the

exclusion of the testimony as evidence if the witness were then present and testifying. However, objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are waived by failure to make them before or during the taking of the deposition, if the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) **As to Manner and Form:** Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might have been obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(e) **As to Errors by Officer:** Errors or irregularities in the manner in which testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the presiding officer, are waived unless a motion to correct or suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. See also Rule 143(c).

TITLE IX.
ADMISSIONS AND STIPULATIONS

RULE 90. REQUESTS FOR ADMISSION

(a) Scope and Time of Request: A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters which are not privileged and are relevant to the subject matter involved in the pending action, provided such matters are set forth in the request and relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Requests for admission must be commenced and completed within the same period provided in Rule 70(a)(2) for commencement and completion of discovery.

(b) The Request: The request may, without leave of Court, be served by any party to a pending case. Each matter of which an admission is requested shall be separately set forth. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The party making the request shall serve a copy thereof on the other party, and shall file the original with proof of service with the Court.

(c) Response to Request: Each matter is deemed admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the requesting party (i) a written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or (ii) an objection, stating in detail the reasons therefor. The response shall be signed by the party or his counsel, and the

original thereof, with proof of service on the other party, shall be filed with the Court. A denial shall fairly meet the substance of the requested admission; and, when good faith requires that a party qualify his answer or deny only a part of a matter, he shall specify so much of it as is true and deny or qualify the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter, of which an admission has been requested, presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of paragraph (f) of this Rule, deny the matter or set forth reasons why he cannot admit or deny it. An objection on the ground of relevance may be noted by any party but is not to be regarded as just cause for refusal to admit or deny.

(d) **Motion to Review:** The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. In lieu of any such order, the Court may determine that final disposition of the request shall be made at some later time which may be more appropriate for disposing of the question involved.

(e) **Effect of Admission:** Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or modification of the admission. Subject to any other orders made in the case by the Court, withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal or modification will prejudice him in prosecuting his case or defense on the merits. Any admission made by a party under

this Rule is for the purpose of the pending action only and is not an admission by him for any other purpose, nor may it be used against him in any other proceeding.

(f) Sanctions: If any party unjustifiably fails to admit the genuineness of any document or the truth of any matter as requested in accordance with this Rule, the party requesting the admission may apply to the Court for an order imposing such sanction on the other party or his counsel as the Court may find appropriate in the circumstances, including but not limited to the sanctions provided in Title X. The failure to admit may be found unjustifiable unless the Court finds that (1) the request was held objectionable pursuant to this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to doubt the truth of the matter or the genuineness of the document in respect of which the admission was sought, or (4) there was other good reason for failure to admit.

(g) Other Applicable Rules: For Rules concerned with requency and timing of requests for admissions in relation o other procedures, supplementation of answers, effect of vasive or incomplete answers or responses, protective orders, and sanctions and enforcements, see Title X.

RULE 91. STIPULATIONS FOR TRIAL

(a) Stipulations Required: (1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents nd papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of nateriality or relevance may be noted by any other party but s not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule

without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) *Stipulations To Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not ground for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of paragraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

(b) **Form:** Stipulations required under this Rule shall be in writing, signed by the parties thereto or by their counsel, and shall observe the requirements of Rule 23 as to form and style of papers, except that the stipulation shall be filed with the Court in duplicate and only one set of exhibits shall be required. Documents or other papers, which are the subject of stipulation in any respect and which the parties intend to place before the Court, shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs, and shall be appropriately lettered or numbered. Exhibits attached to a stipulation shall be numbered serially, i.e., 1, 2, 3, etc., if offered by the petitioner; shall be lettered serially, i.e., A, B, C, etc., if offered by the respondent; and shall be marked serially, i.e., 1-A, 2-B, 3-C, etc., if offered as joint exhibits.

(c) **Filing:** Executed stipulations prepared pursuant to this Rule, and related exhibits, shall be filed by the parties at or before commencement of the trial of the case, unless the Court in the particular case shall otherwise specify. A stipulation when filed need not be offered formally to be considered in evidence.

(d) **Objections:** Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.

(e) Binding Effect: A stipulation shall be treated, to th extent of its terms, as a conclusive admission by the parties t the stipulation, unless otherwise permitted by the Court o agreed upon by those parties. The Court will not permit party to a stipulation to qualify, change, or contradict stipulation in whole or in part, except that it may do so wher justice requires. A stipulation and the admissions therei shall be binding and have effect only in the pending case an not for any other purpose, and cannot be used against any o the parties thereto in any other case or proceeding.

(f) Noncompliance by a Party: (1) *Motion to Compe Stipulation:* If, at the date of issuance of trial notice in a case, party has refused or failed to confer with his adversary wit respect to entering into a stipulation in accordance with thi Rule, or he has refused or failed to make such a stipulatio of any matter within the terms of this Rule, the part proposing to stipulate may, at a time not earlier than 75 day and not later than 50 days prior to the date set for call of th case from a trial calendar, file a motion with the Court for ar order directing the delinquent party to show cause why th matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall (i show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (ii set forth in express language the specific stipulation which the moving party proposes with respect to each such matte and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation; (iii) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; (iv) show that opposing counsel or the other parties have had reasonable access to hose sources or basis for stipulation and have been nformed of the reasons for stipulation; and (v) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) *Procedure:* Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk of the Court, with a copy thereof sent to

the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the order to show cause for a hearing or conference at such time as the Court shall determine.

(3) *Failure of Response:* If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be entered accordingly.

(4) *Matters Considered:* Opposing claims of evidence will not be weighed under this Rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.

TITLE X. GENERAL PROVISIONS GOVERNING DISCOVERY, DEPOSITIO AND REQUESTS FOR ADMISSION

RULE 100. APPLICABILITY

The Rules in this Title apply according to their tern written interrogatories (Rule 71), production of docum or things (Rule 72), examination by transferees (Rule depositions (Rules 81, 82, 83, and 84), and requests admissions (Rule 90). Such procedures may be use anticipation of the stipulation of facts required by Rul but the existence of such procedures or their use does excuse failure to comply with the requirements of that R See Rule 91(a)(2).

RULE 101. SEQUENCE, TIMING, AND FREQUENCY

Unless the Court orders otherwise for the convenienc the parties and witnesses and in the interests of justice, subject to the provisions of the Rules herein which a more specifically, the procedures set forth in Rule 100 be used in any sequence, and the fact that a party is enga in any such method or procedure shall not operate to d the use of any such method or procedure by any other pa However, none of these methods or procedures shall used in a manner or at a time which shall delay or impede progress of the case toward trial status or the trial of the on the date for which it is noticed, unless in the interest justice the Court shall order otherwise. Unless the Co orders otherwise under Rule 103, the frequency of us these methods or procedures is not limited.

RULE 102. SUPPLEMENTATION OF RESPONSES

A party who has responded to a request for discovery (under Rules 71, 72, or 73) or to a request for admission (under Rule 90) in a manner which was complete when made, is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any matter directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he knows that (A) the response was incorrect when made, or (B) the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

RULE 103. PROTECTIVE ORDERS

(a) **Authorized Orders:** Upon motion by a party or any other affected person, and for good cause shown, the Court may make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to one or more of the following:

(1) That the particular method or procedure not be used.

(2) That the method or procedure be used only on specified terms and conditions, including a designation of the time or place.

(3) That a method or procedure be used other than the one selected by the party.

(4) That certain matters not be inquired into, or that the method be limited to certain matters or to any other extent.

(5) That the method or procedure be conducted with no one present except persons designated by the Court.

(6) That a deposition or other written materials, after being sealed, be opened only by order of the Court.

(7) That a trade secret or other information not be disclosed or be disclosed only in a designated way.

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

(9) That expense involved in a method or procedure be borne in a particular manner or by specified person or persons.

(10) That documents or records be impounded by the Court to insure their availability for purpose of review by the parties prior to trial and use at the trial.

(b) Denials: If a motion for a protective order is denied in whole or in part, the Court may, on such terms or conditions it deems just, order any party or person to comply or to respond in accordance with the procedure involved.

RULE 104.
ENFORCEMENT ACTION AND SANCTIONS

(a) Failure to Attend Deposition or to Answer Interrogatories or Respond to Request for Inspection or Production: If a party or an officer, director or managing agent of a party or a person designated in accordance with Rule 81(c) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition pursuant to Rules 81, 82, 83 or 84, or (2) to serve answers or objections to interrogatories submitted under Rule 71, after proper service thereof, or (3) to serve a written response to a request for production or inspection submitted under Rules 72 or 73 after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (b) or (c) of

this Rule. If any person, after being served with a subpoena or having waived such service, willfully fails to appear before the officer who is to take his deposition or refuses to be sworn, or if any person willfully fails to obey an order requiring him to answer designated interrogatories or questions, such failure may be considered contempt of court. The failure to act described in this paragraph (a) may not be excused on the ground that the deposition sought, or the interrogatory submitted, or the production or inspection sought, is objectionable, unless the party failing to act has theretofore raised the objection, or has applied for a protective order under Rule 103, with respect thereto at the proper time and in the proper manner, and the Court has either sustained or granted or not yet ruled on the objection or the application for the order.

(b) **Failure to Answer:** If a person fails to answer a question or interrogatory propounded or submitted in accordance with Rules 71, 81, 82, 83, or 84, or fails to respond to a request to produce or inspect or fails to produce or permit the inspection in accordance with Rules 72 or 73, or fails to make a designation in accordance with Rule 81(c), the aggrieved party may move the Court for an order compelling an answer, response, or compliance with the request, as the case may be. When taking a deposition on oral examination, the examination may be completed on other matters or the examination adjourned, as the proponent of the question may prefer, before he applies for such order.

(c) **Sanctions:** If a party or an officer, director, or managing agent of a party or a person designated in accordance with Rule 81(c) fails to obey an order made by the Court with respect to the provisions of Rules 71, 72, 73, 81, 82, 83, 84, or 90, the Court may make such orders as to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or

prohibiting him from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the case or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of the Court the failure to obey any such order.

(d) Evasive or Incomplete Answer or Response: For purposes of this Rule and Rules 71, 72, 73, 81, 82, 83, 84, and 90, an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

TITLE XI. PRETRIAL CONFERENCES

RULE 110. PRETRIAL CONFERENCES

(a) **General:** In appropriate cases, the Court will undertake to confer with the parties in pretrial conferences with a view to narrowing issues, stipulating facts, simplifying the presentation of evidence, or otherwise assisting in the preparation for trial or possible disposition of the case in whole or in part without trial.

(b) **Cases Calendared:** Either party in a case listed on any trial calendar may request of the Court, or the Court on its own motion may order, a pretrial conference. The Court may, in its discretion, set the case for a pretrial conference during the trial session. If sufficient reason appears therefor, a pretrial conference will be scheduled prior to the call of the calendar at such time and place as may be practicable and appropriate.

(c) **Cases Not Calendared:** If a case is not listed on a trial calendar, the Chief Judge, in his discretion, upon motion of either party or upon his own motion, may list such case for a pretrial conference upon a calendar in the place designated for trial, or may assign the case for a pretrial conference either in Washington, D. C., or in any other convenient place.

(d) **Conditions:** A request or motion for a pretrial conference shall include a statement of the reasons therefor. Pretrial conferences will in no circumstances be held as a substitute for the conferences required between the parties in order to comply with the provisions of Rule 91, but a pretrial conference, for the purpose of assisting the parties in entering into the stipulations called for by Rule 91, will be held by the Court where the party requesting such pretrial conference has in good faith attempted without success to obtain such stipulation from his adversary. Nor will any

pretrial conference be held where the Court is satisfied that the request therefor is frivolous or is made for purposes of delay.

(e) Order: The Court may, in its discretion, issue appropriate pretrial orders.

TITLE XII. DECISION WITHOUT TRIAL

RULE 120. JUDGMENT ON THE PLEADINGS

(a) **General:** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.

(b) **Matters Outside Pleadings:** If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and shall be disposed of as provided in Rule 121, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

RULE 121. SUMMARY JUDGMENT

(a) **General:** Either party may move, with or without supporting affidavits, for a summary adjudication in his favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such time as not to delay the trial.

(b) **Motion and Proceedings Thereon:** The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Any opposing written response, with or without supporting affidavits, shall be filed not later than 10 days prior to the date set for hearing. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together

with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

(c) **Case Not Fully Adjudicated on Motion:** If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(d) **Form of Affidavits; Further Testimony; Defense Required:** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The Court may permit affidavits to be supplemented or opposed by answers to interrogatories, depositions, further affidavits, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, a decision, if appropriate, may be entered against him.

(e) **When Affidavits Are Unavailable:** Should it appear

from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may deny the motion or may order a continuance to permit affidavits to be obtained or other steps to be taken or may make such other order as is just. Where it appears from the affidavits of a party opposing the motion that his only legally available method of controverting the facts set forth in the supporting affidavits of the moving party is through cross-examination of such affiants or the testimony of third parties from whom affidavits cannot be secured, such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits are genuinely disputed.

(f) **Affidavits Made In Bad Faith:** Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or for the purpose of delay, the Court may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable counsel's fees, and any offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

RULE 122. SUBMISSION WITHOUT TRIAL

(a) **General:** Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way), may be submitted at any time by notice of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court. The Chief Judge will assign such a case to a Division, which will fix a time for filing briefs or for oral argument.

(b) **Burden of Proof:** The fact of submission of a case under paragraph (a) of this Rule, does not alter the burden of proof, or the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof.

RULE 123. DEFAULT AND DISMISSAL

(a) **Default:** When any party has failed to plead or otherwise proceed as provided by these Rules or as required by the Court, he may be held in default by the Court either on motion of another party or on the initiative of the Court. Thereafter, the Court may enter a decision against the defaulting party, upon such terms and conditions as the Court may deem proper, or may impose such sanctions (see, e.g., Rule 104) as the Court may deem appropriate. The Court may, in its discretion, conduct hearings to ascertain whether a default has been committed, to determine the decision to be entered or the sanctions to be imposed, or to ascertain the truth of any matter.

(b) **Dismissal:** For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner. The Court may, for similar reasons, decide against any party any issue as to which he has the burden of proof; and such decision shall be treated as a dismissal for purposes of paragraphs (c) and (d) of this Rule.

(c) **Setting Aside Default or Dismissal:** For reasons deemed sufficient by the Court and upon motion expeditiously made, the Court may set aside a default or dismissal or the decision rendered thereon.

(d) **Effect of Decision on Default or Dismissal:** A decision rendered upon a default or in consequence of a dismissal, other than a dismissal for lack of jurisdiction, shall operate as an adjudication on the merits.

TITLE XIII.
CALENDARS AND CONTINUANCES

RULE 130. MOTIONS AND OTHER MATTERS

(a) Calendars: If a hearing is to be held on a motion or other matter, apart from a trial on the merits, such hearing ordinarily will be held at Washington, D. C., on a motion calendar called on Wednesday throughout the year, unless the Court, on its own motion or on the motion of a party, shall direct otherwise. As to hearings at other places, see Rule 50(b)(2). The parties will be given notice of the place and time of hearing.

(b) Failure to Attend: The Court may hear a matter ex parte where a party fails to appear at such a hearing. With respect to attendance at such hearings, see Rule 50(c).

RULE 131. REPORT CALENDARS

On a calendar specifically set for the purpose or on a trial calendar, and after notice to the parties of the time and place, any case at issue may be listed and called, first, for report as to whether the case is to be tried or otherwise disposed of, and if the latter, for report as to its status; and, secondly, if it is to be tried, for report on the status of preparations for trial, with particular reference to the stipulation requirements of Rule 91. With respect to any case on such a calendar, the Court may consider other matters and take such action as it deems appropriate.

RULE 132. TRIAL CALENDARS

(a) General: Each case, when at issue, will be placed upon a calendar for trial at the place designated in accordance with Rule 140. Not less than 90 days in advance unless otherwise authorized by the Chief Judge, the Clerk

shall notify the parties of the place and time for which the calendar is set.

(b) Calendar Call: Each case appearing on a trial calendar will be called at the time and place scheduled. At the call, counsel or the parties shall indicate their estimate of the time required for trial. The cases for trial will thereupon be tried in due course, but not necessarily in the order listed.

RULE 133. SPECIAL OR OTHER CALENDARS

Special or other calendars may be scheduled by the Court, upon motion or at its own initiative, for any purpose which the Court may deem appropriate. The parties involved shall be notified of the place and time of such calendars.

RULE 134. CONTINUANCES

A case or matter scheduled on a calendar may be continued by the Court upon motion or at its own initiative. Court action, on cases or matters set for hearing or trial or other consideration, will not be delayed by a motion for continuance unless it is timely, sets forth good and sufficient cause, and complies with all applicable Rules. Conflicting engagements of counsel or employment of new counsel will not be regarded as ground for continuance unless the motion for continuance, in addition to otherwise satisfying this Rule, is filed promptly after notice is given of the hearing or trial or other scheduled matter, or unless extenuating circumstances for later filing are shown which the Court deems adequate. A motion for continuance, filed 30 days or less prior to the date to which it is directed, may be set for hearing on that date. As to extensions of time, see Rule 25(c).

TITLE XIV. TRIALS

RULE 140. PLACE OF TRIAL

(a) **Requests for Place of Trial:** The petitioner, at the time of filing the petition, shall file a request showing the place at which he would prefer the trial to be held. If the petitioner has not filed such request, the respondent, at the time he files his answer, shall file a request showing the place of trial preferred by him. For a list of places at which the Court has held trial sessions, see Appendix IV, p. 103.

(b) **Form:** Such request shall be filed separately from the petition or answer, shall be subject to the requirements of form applicable to motions, see Rule 50(a), and shall consist of an original and two copies. See Form 4, Appendix I, p. 91.

(c) **Designation of Place of Trial:** The Court will designate a place of trial which involves as little inconvenience and expense to taxpayers as is practicable. The parties will be notified of the place at which the trial will be held.

(d) **Motion to Change Place of Trial:** If either party desires a change in the designation of the place of trial, he shall file a motion to that effect, stating fully his reasons therefor. Such motions, made after the notice of the time of trial has been issued, will not be deemed to have been timely filed.

RULE 141. CONSOLIDATION; SEPARATE TRIALS

(a) **Consolidation:** When cases involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue; it may order all the cases consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay or duplication. Similar action

may be taken where cases involve different tax liabilities of the same parties, notwithstanding the absence of a common issue. As to joinder of parties, see Rule 61(a).

(b) Separate Trials: The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition or economy, may order a separate trial of any one or more claims or defenses or issues, or of the tax liability of any party or parties. The Court may enter appropriate orders or decisions with respect to any such claims, defenses, issues, or parties that are tried separately. As to severance of parties or claims, see Rule 61(b).

RULE 142. BURDEN OF PROOF

(a) General: The burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in his answer, it shall be upon the respondent. As to affirmative defenses, see Rule 39.

(b) Fraud: In any case involving the issue of fraud with intent to evade tax, the burden of proof in respect of that issue is on the respondent, and that burden of proof is to be carried by clear and convincing evidence. Code Section 7454(a).

(c) Foundation Managers: In any case involving the issue of the knowing conduct of a foundation manager as set forth in the provisions of Code Section 4941, 4944, or 4945, the burden of proof in respect of such issue is on the respondent, and such burden of proof is to be carried by clear and convincing evidence. Code Section 7454(b).

(d) Transferee Liability: The burden of proof is on the respondent to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. Code Section 6902(a).

(e) Accumulated Earnings Tax: Where the notice of deficiency is based in whole or in part on an allegation of accumulation of corporate earnings and profits beyond the reasonable needs of the business, the burden of proof with

respect to such allegation is determined in accordance with Code Section 534. If the petitioner has submitted to the respondent a statement which is claimed to satisfy the requirements of Code Section 534(c), the Court will ordinarily on timely motion filed after the case has been calendared for trial, rule prior to the trial on whether such statement is sufficient to shift the burden of proof to the respondent to the limited extent set forth in Code Section 534(a)(2).

RULE 143. EVIDENCE

(a) General: Trials before the Court will be conducted in accordance with the rules of evidence applicable in trials without a jury in the United States District Court for the District of Columbia. See Code Section 7453. To the extent applicable to such trials, those rules include the rules of evidence in the Federal Rules of Civil Procedure and any rules of evidence generally applicable in the Federal courts (including the United States District Court for the District of Columbia).

(b) Ex Parte Statements: Ex parte affidavits, statements in briefs, and unadmitted allegations in pleadings do not constitute evidence. As to allegations in pleadings not denied, see Rules 36(c), 37(c) and (d).

(c) Depositions: Testimony taken by deposition shall not be treated as evidence in a case until offered and received in evidence. Error in the transcript of a deposition may be corrected by agreement of the parties, or by the Court on proof it deems satisfactory to show an error exists and the correction to be made, subject to the requirements of Rules 81(h)(1) and 85(e). As to the use of a deposition, see Rule 81(i).

(d) Documentary Evidence: (1) *Copies:* A *clearly legible* copy of any book, record, paper, or document may be offered directly in evidence in lieu of the original, where there is no objection, or where the original is available but admission of a copy is authorized by the Court; however, unless impractical, the Court may require the submission of the original. Where the original is admitted in evidence, a *clearly legible* copy may be substituted later for the original

or such part thereof as may be material or relevant, upon leave granted in the discretion of the Court.

(2) *Return of Exhibits:* Exhibits may be disposed of as the Court deems advisable. A party desiring the return at his expense of any exhibit belonging to him, shall, after decision of the case by the Court has become final, make prompt written application to the Clerk, suggesting a practical manner of delivery.

(e) Interpreters: The Court may appoint an interpreter of its own selection and may fix his reasonable compensation, which compensation shall be paid by one or more of the parties or otherwise as the Court may direct.

RULE 144. EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the Court are unnecessary. It is sufficient that a party at the time the ruling or order of the Court is made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

RULE 145. EXCLUSION OF PROPOSED WITNESSES

(a) Exclusion: On its own motion or on motion of a party, the Court may exclude from the courtroom any or all persons, other than parties, whom the parties expect or intend to call as witnesses in the case. In connection with any such exclusion, the Court may issue to witnesses (actual or potential), counsel, and parties such instructions as it may deem appropriate in the circumstances. In the discretion of the Court, it may refuse to apply this paragraph to a person acting in an advisory capacity to counsel for either party. Undue delay in moving for such exclusion of a person may be treated by the Court as sufficient ground for denying the motion.

(b) Contempt: Among other measures which the Court may take in the circumstances, it may punish as for a

contempt (i) any witness who remains within hearing of the proceedings after such exclusion has been directed, that fact being noted in the record; and (ii) any person (witness, counsel, or party) who willfully violates instructions issued by the Court with respect to such exclusion.

RULE 146. DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or otherwise admissible. The Court's determination shall be treated as a ruling on a question of law.

RULE 147. SUBPOENAS

(a) Attendance of Witnesses; Form; Issuance: Every subpoena shall be issued under the seal of the Court, shall state the name of the Court and the caption of the case, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. A subpoena, including a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, shall be issued to a party requesting it, who shall fill it in before service. Subpoenas may be obtained at the Office of the Clerk in Washington, D. C., or from a deputy clerk at a trial session. See Code Section 7456(a).

(b) Production of Documentary Evidence: A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service: A subpoena may be served by a United

States marshal, or by his deputy, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commissioner, fees and mileage need not be tendered. See Rule 148 for fees and mileage payable. The person making service of a subpoena shall make his return thereon in accordance with the form appearing in the subpoena.

(d) Subpoena for Taking Depositions: (1) *Issuance and Response:* The order of the Court approving the taking of a deposition pursuant to Rule 81(b)(2), or the executed stipulation pursuant to Rule 81(d), constitutes authorization for issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things, which come within the scope of the order or stipulation pursuant to which the deposition is taken. Within 10 days after service of the subpoena or such earlier time designated therein for compliance, the person to whom the subpoena is directed may serve upon the party on whose behalf the subpoena has been issued written objections to compliance with the subpoena in any or all respects. Such objections should not include objections made, or which might have been made, to the application to take the deposition pursuant to Rule 81(b)(2). If an objection is made, the party serving the subpoena shall not be entitled to compliance therewith to the extent of such objection, except as the Court may order otherwise upon application to it. Such application for an order may be made, with notice to the other party and to any other objecting persons, at any time before or during the taking of the deposition, subject to the time requirements of Rule 81(b)(2). As to availability of protective orders, see Rule 103; and, as to enforcement of such subpoenas, see Rule 104.

(2) *Place of Examination:* The place designated in the subpoena for examination of the deponent shall be the place specified in the order of the Court referred to in Rule

81(b)(2) or in the executed stipulation referred to in Rule 81(d). With respect to a deposition to be taken in a foreign country, see Rules 81(e)(2) and 84(a).

(e) **Contempt:** Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the Court.

RULE 148. FEES AND MILEAGE

(a) **Amount:** Any witness summoned to a hearing or trial, or whose deposition is taken, shall receive the same fees and mileage as witnesses in the United States District Courts. For such amounts, see Appendix III, p. 102.

(b) **Tender:** No witness, other than one for the Commissioner, shall be required to testify until he shall have been tendered the fees and mileage to which he is entitled according to law. With respect to witnesses for the Commissioner, see Code Section 7457(b)(1).

(c) **Payment:** The party at whose instance a witness appears shall be responsible for the payment of the fees and mileage to which that witness is entitled.

RULE 149. FAILURE TO APPEAR OR TO ADDUCE EVIDENCE

(a) **Attendance at Trials:** The unexcused absence of a party or his counsel when a case is called for trial will not be ground for delay. The case may be dismissed for failure properly to prosecute, or the trial may proceed and the case be regarded as submitted on the part of the absent party or parties.

(b) **Failure of Proof:** Failure to produce evidence, in support of an issue of fact as to which a party has the burden of proof and which has not been conceded by his adversary may be ground for dismissal or for determination of the affected issue against that party. Facts may be established by stipulation in accordance with Rule 91, but the mere filing of such stipulation does not relieve the party, upon whom rests the burden of proof, of the necessity of properly producing evidence in support of facts not adequately established by

such stipulation. As to submission of a case without trial, see Rule 122.

RULE 150. RECORD OF PROCEEDINGS

(a) **General:** Hearings and trials before the Court shall be stenographically reported or otherwise recorded, and a transcript thereof shall be made if, in the opinion of the Court or the Judge presiding at a hearing or trial, a permanent record is deemed appropriate. Transcripts shall be supplied to the parties and other persons at such charges as may be fixed or approved by the Court.

(b) **Stenographic Transcript as Evidence:** Whenever the testimony of a witness at a trial or hearing which was stenographically reported or otherwise recorded is admissible in evidence at a later trial or hearing, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

RULE 151. BRIEFS

(a) **General:** Briefs shall be filed after trial or submission of a case, except as otherwise directed by the presiding Judge. In addition to or in lieu of briefs, the presiding Judge may permit or direct the parties to make oral argument or file memoranda or statements of authorities.

(b) **Time for Filing Briefs:** Briefs may be filed simultaneously or seriatim, as the presiding Judge directs. The following times for filing briefs shall prevail in the absence of any different direction by the presiding Judge:

(1) *Simultaneous briefs:* Opening briefs within 45 days after the conclusion of the trial, and answering briefs 30 days thereafter.

(2) *Seriatim briefs:* Opening brief within 45 days after the conclusion of the trial, answering brief within 30 days thereafter, and reply brief within 20 days after the due date of the answering brief.

A party who fails to file an opening brief is not permitted to file an answering or reply brief except on leave granted by the Court. A motion for extension of time for filing any brief shall be made not less than 5 days prior to the due date and

shall recite that the moving party has advised his adversary and whether or not he objects to the motion. As to the effect of extensions of time, see Rule 25(c).

(c) **Service:** Each brief will be served by the Clerk promptly upon the opposite party after it is filed, except where it bears a notation that it has already been served by the party submitting it, and except that, in the event of simultaneous briefs, such brief will not be served until the corresponding brief of the other party has been filed, unless the Court directs otherwise. Delinquent briefs will not be accepted unless accompanied by a motion setting forth reasons deemed sufficient by the Court to account for the delay. In the case of simultaneous briefs, the Court may refuse to receive a delinquent brief from a party after his adversary's brief has been served upon him.

(d) Number of Copies: Two copies of each brief, plus an additional copy for each person to be served, shall be filed.

(e) Form and Contents: All briefs shall contain the following in the order indicated:

(1) On the first page, a table of contents with page references, followed by a list of all citations arranged alphabetically as to cited cases and stating the pages in the brief at which cited. Citations shall be in italics when printed and underscored when typewritten.

(2) A statement of the nature of the controversy, the tax involved, and the issues to be decided.

(3) Proposed findings of fact (in the opening brief or briefs), based on the evidence, in the form of numbered statements, each of which shall be complete and shall consist of a concise statement of essential fact and not a recital of testimony nor a discussion or argument relating to the evidence or the law. In each such numbered statement, there shall be inserted references to the pages of the transcript or the exhibits or other sources relied upon to support the statement. In an answering or reply brief, the party shall set forth his objections, together with his reasons therefor, to any proposed findings of any other party, showing the numbers of the statements to which his objections are directed; in addition, he may set forth alternative proposed findings of fact.

(4) A concise statement of the points on which the party relies.

(5) The argument, which sets forth and discusses the points of law involved and any disputed questions of fact.

(6) The signature of counsel or the party submitting the brief. As to signature, see Rule 23(a)(3).

TITLE XV. DECISION*

RULE 155. COMPUTATIONS BY PARTIES FOR ENTRY OF DECISION

(a) Agreed Computations: Where the Court has filed its opinion determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency, liability, or overpayment to be entered as the decision. If the parties are in agreement as to the amount of the deficiency or overpayment to be entered as the decision pursuant to the findings and conclusions of the Court, they or either of them shall file promptly with the Court an original and two copies of a computation showing the amount of the deficiency, liability, or overpayment and that there is no disagreement that the figures shown are in accordance with the findings and conclusions of the Court. The Court will then enter its decision.

(b) Procedure in Absence of Agreement: If, however, the parties are not in agreement as to the amount of the deficiency, liability, or overpayment to be entered as the decision in accordance with the findings and conclusions of the Court, either of them may file with the Court a computation of the deficiency, liability, or overpayment believed by him to be in accordance with the Court's findings and conclusions. The Clerk will serve a copy thereof upon the opposite party, will place the matter upon a motion calendar for argument in due course, and will serve notice of the argument upon both parties. If the opposite party fails to file objection, accompanied or preceded by an alternative computation, at least 5 days prior to the date of such

*For statutory provisions relating to entry, date, and finality of decision, see Code Sections 7459, 7463(b), and 7481.

argument or any continuance thereof, the Court may enter decision in accordance with the computation already submitted. If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, the parties will be afforded an opportunity to be heard in argument thereon on the date fixed, and the Court will determine the correct deficiency, liability, or overpayment and will enter its decision accordingly.

(c) **Limit on Argument:** Any argument under this Rule will be confined strictly to consideration of the correct computation of the deficiency, liability, or overpayment resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This Rule is not to be regarded as affording an opportunity for retrial or reconsideration.

RULE 156. ESTATE TAX DEDUCTION DEVELOPING AT OR AFTER TRIAL

If the parties in an estate tax case are unable to agree under Rule 155, or under a remand, upon a deduction involving expenses incurred at or after the trial, any party may move to reopen the case for further trial on that issue.

TITLE XVI. POST-TRIAL PROCEEDINGS

RULE 160. HARMLESS ERROR

No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a decision or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of a case will disregard any error or defect which does not affect the substantial rights of the parties.

RULE 161. MOTION FOR RECONSIDERATION OF FINDINGS OR OPINION

Any motion for reconsideration of an opinion or findings of fact, with or without a new or further trial, shall be filed within 30 days after the opinion has been served, unless the Court shall otherwise permit.

RULE 162. MOTION TO VACATE OR REVISE DECISION

Any motion to vacate or revise a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit.

RULE 163. NO JOINDER OF MOTIONS UNDER RULES 161 AND 162

Motions under Rules 161 and 162 shall be made separately from each other and not joined to or made part of any other motion.

TITLE XVII. SMALL TAX CASES

RULE 170. GENERAL

The Rules of this Title XVII, referred to herein as the "Small Tax Case Rules," set forth the special provisions which are to be applied to small tax cases as defined in Rule 171. See Code Section 7463 (Appendix II, p. 101). Except as otherwise provided in these Small Tax Case Rules, the other rules of practice of the Court are applicable to such cases.

RULE 171. SMALL TAX CASE DEFINED

The term "small tax case" means a case in which:

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds—

(1) $1,500 for any one taxable year in the case of income or gift taxes, or

(2) $1,500 in the case of estate taxes;

(b) The petitioner has made a request in accordance with Rule 172 to have the proceedings conducted under Code Section 7463; and

(c) The Court has not entered an order in accordance with Rule 172(d) or Rule 173, discontinuing the proceedings in the case under Code Section 7463.

RULE 172. ELECTION OF SMALL TAX CASE PROCEDURE

With respect to classification of a case as a small tax case under Code Section 7463, the following shall apply:

(a) A petitioner who wishes to have the proceedings in

his case conducted under Code Section 7463 may so request at the time he files his petition. See Rule 175.

(b) If the Commissioner opposes the petitioner's request to have the proceedings conducted under Code Section 7463, he shall at the time he files his answer submit an accompanying motion in which he shall set forth the reasons for his opposition.

(c) A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted under Code Section 7463. Upon the filing of such request, the Commissioner will be given due time in which to indicate whether he is opposed to it, and he shall state his reasons therefor in the event of such opposition.

(d) If such request is made in accordance with the provisions of this Rule 172, the case will be docketed as a small tax case. The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, enter an order directing that the small tax case designation shall be removed and that the proceedings shall not be conducted under the Small Tax Case Rules. If no such order is entered, the petitioner will be considered to have exercised his option and the Court shall be deemed to have concurred therein, in accordance with Code Section 7463, at the commencement of the trial.

RULE 173. DISCONTINUANCE OF PROCEEDINGS

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the rules of practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed $1,500 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.

RULE 174. REPRESENTATION

A petitioner in a small tax case may appear for himself without representation or may be represented by any person admitted to practice before the Court. As to representation, see Rule 24.

RULE 175. PLEADINGS

(a) Petition: (1) *Form and Content:* The petition in a small tax case shall be substantially in accordance with Form 2 shown in Appendix I, p. 89, or shall, in the alternative, comply with the requirements of Rule 34(b), and contain additionally (A) the office of the Internal Revenue Service which issued the deficiency notice, (B) the taxpayer identification number (e.g., social security number) of each petitioner, and (C) a request that the proceedings be conducted under Code Section 7463.

(2) *Filing Fee:* The fee for filing a petition shall be $10, payable at the time of filing. The Court may waive payment of the fee if the petitioner establishes to the satisfaction of the Court that he is unable to make such payment.

(3) *Verification Not Required:* The petition need not be verified, unless the Court directs otherwise.

(b) Answer: The provisions of Rule 36 shall apply to answers filed by the Commissioner in small tax cases.

(c) Reply: A reply to the answer shall not be filed unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the affirmative allegations of the answer will be deemed denied.

RULE 176. PRELIMINARY HEARINGS

If, in a small tax case, it becomes necessary to hold a hearing on a motion or other preliminary matter, the parties may submit their views in writing and may, but shall not ordinarily be required to, appear personally at such hearing. However, if the Court deems it advisable for the petitioner

or his counsel to appear personally, the Court will so notify the petitioner or his counsel and will make every effort to schedule such a hearing at a place convenient to them.

RULE 177. TRIAL

(a) **Place of Trial:** At the time of filing the petition, the petitioner may, in accordance with Form 4 in Appendix I, p. 91, or by other separate writing, request the place where he would prefer the trial to be held. If the petitioner has not filed such a request, the respondent, at the time he files his answer, shall file a request showing the place of trial preferred by him. The Court will make every effort to designate the place of trial at the location most convenient to that requested where suitable facilities are available.

(b) **Conduct of Trial and Evidence:** Trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.

(c) **Briefs:** Neither briefs nor oral arguments will be required in small tax cases, but the Court on its own motion or upon request of either party may permit the filing of briefs or memorandum briefs.

RULE 178. TRANSCRIPTS OF PROCEEDINGS

The hearing in, or trial of, a small tax case shall be stenographically reported or otherwise recorded but a transcript thereof need not be made unless the Court otherwise directs.

RULE 179. NUMBER OF COPIES OF PAPERS

Only an original and two conformed copies of *any* paper need be filed in a small tax case. An additional copy shall be filed for each additional docketed case which has been, or is requested to be, consolidated.

TITLE XVIII.
COMMISSIONERS OF THE COURT

RULE 180. ASSIGNMENT

The Chief Judge may from time to time designate a commissioner, appointed under Section 7456(c) of the Code, to deal with any matter pending before the Court in accordance with these Rules and such directions as may be prescribed by the Chief Judge.

RULE 181. POWERS AND DUTIES

Subject to the specifications and limitations in the order designating a commissioner and in accordance with the applicable provisions of these Rules, the commissioner has and shall exercise the power to regulate all proceedings in any matter before him, including the conduct of trials, pretrial conferences, and hearings on motions, and to do all acts and take all measures necessary or proper for the efficient performance of his duties. He may require the production before him of evidence upon all matters embraced within his assignment, including the production of all books, papers, vouchers, documents, and writings applicable thereto, and he has the authority to put witnesses on oath and to examine them. He may rule upon the admissibility of evidence, in accordance with provisions of Code Sections 7453 and 7463, and may exercise such further and incidental authority, including ordering the issuance of subpoenas, as may be necessary for the conduct of trials or other proceedings.

RULE 182. POST-TRIAL PROCEDURE

Except in small tax cases (see Rule 183) or as otherwise provided, the following procedure shall be observed in cases tried before a commissioner:

(a) **Proposed Findings and Briefs:** Each party shall file his initial brief, including his proposed findings of fact and legal argument, within 60 days after the date on which the trial is concluded, unless otherwise directed. A party thereafter desiring to file a responsive brief shall do so, including any objections to any proposed findings of fact, within 30 days after the expiration of the period for filing the initial brief, unless otherwise directed. With respect to the content, form, number of copies, and other applicable requirements, the proposed findings of fact and the briefs shall conform to the provisions of Rule 151.

(b) **Commissioner's Report:** After all the briefs have been filed by all the parties or the time for doing so has expired, the commissioner shall file his report, including his findings of fact and opinion. A copy of the report shall forthwith be served on each party.

(c) **Exceptions:** Within 45 days after service of the commissioner's report, a party may file with the Court a brief setting forth any exceptions of law or of fact to that report. Within 30 days of service upon him of such brief, any other party may file a brief in response thereto. In any brief filed pursuant to this paragraph, a party may rely in whole or in part upon the briefs previously submitted by him to the commissioner under paragraph (a) of this Rule 182. Unless a party shall have proposed a particular finding of fact, or unless he shall have objected to another party's proposed finding of fact, the Court may refuse to consider his exception to the commissioner's report for failure to make such a finding desired by him or for inclusion of such finding proposed by the other party, as the case may be.

(d) **Oral Argument and Decision:** The Division to which the case is assigned may, upon motion of any party or on its own motion, direct oral argument. The Division inter alia may adopt the commissioner's report or may modify it or may reject it in whole or in part, or may receive further evidence, or may recommit it with instructions. Due regard shall be given to the circumstance that the commissioner had the opportunity to evaluate the credibility of witnesses; and the findings of fact recommended by the commissioner shall be presumed to be correct.

RULE 183. SMALL TAX CASES

Rule 182 shall not apply to small tax cases, as defined in Rule 171. A commissioner who conducts the trial of such a small tax case shall, as soon after such trial as shall be practicable, prepare a summary of the facts and reasons for his proposed disposition of the case, which then shall be submitted promptly to the Chief Judge or to a Judge or Division of the Court, if the Chief Judge shall so direct.

TITLE XIX. APPEALS

RULE 190. HOW APPEAL TAKEN

(a) General: Review of a decision of the Court by a United States Court of Appeals is obtained by filing a notice of appeal with the Clerk of the Tax Court within 90 days after the decision is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the Court's decision is entered. Code Section 7483. For other requirements governing such an appeal, see Rules 13 and 14 of the Federal Rules of Appellate Procedure. A suggested form of the notice of appeal is contained in Appendix I, p. 95. See Code Section 7482(a).

(b) Venue: For the circuit of the Court of Appeals to which the appeal is to be taken, see Code Section 7482(b).

RULE 191. PREPARATION OF THE RECORD ON APPEAL

The Clerk will prepare the record on appeal and forward it to the Clerk of the Court of Appeals pursuant to the notice of appeal filed with the Court, in accordance with Rules 10 and 11 of the Federal Rules of Appellate Procedure. In addition, at the time the Clerk forwards the record on appeal to the Clerk of the Court of Appeals, he shall forward to each of the parties a copy of the index to the record on appeal.

RULE 192. BOND TO STAY ASSESSMENT AND COLLECTION

The filing of a notice of appeal does not stay assessment or collection of a deficiency determined by the Court unless, on or before the filing of the notice of appeal, a bond is filed

with the Court in accordance with Code Section 7485. For forms of bonds, see Appendix I, pp. 96, 97; for forms of power of attorney used with United States Bonds as collateral, see Appendix I, pp. 98, 99.

TITLE XX.
PRACTICE BEFORE THE COURT

RULE 200. ADMISSION TO PRACTICE

(a) Qualifications: (1) *General:* An applicant for admission to practice before the Court must establish to the satisfaction of the Court that he is a citizen of the United States, of good moral character and repute, and is possessed of the requisite qualifications to represent others in the preparation and trial of cases. In addition, the applicant must satisfy the further requirements of this Rule 200.

(2) *Attorneys:* An attorney at law may be admitted to practice upon filing with the Admissions Clerk a completed application accompanied by a fee of $10 and a current certificate from the Clerk of the appropriate court, showing that the applicant has been admitted to practice before and is a member in good standing of the Bar of the Supreme Court of the United States, or of the highest or appropriate court of any State, or Territory, or of the District of Columbia. A current court certificate is one executed within 60 calendar days preceding the date of the filing of the application.

(3) *Other Applicants:* An applicant, not an attorney at law, must file with the Admissions Clerk a completed application accompanied by a fee of $10. In addition, such an applicant, as a condition of being admitted to practice, must give evidence of his qualifications satisfactory to the Court by means of a written examination given by the Court, and the Court may require such person, in addition, to give similar evidence by means of an oral examination. Any person who has thrice failed to give such evidence by means of such written examination shall not thereafter be eligible to take another examination for admission.

(b) Application: An application for admission to

practice before the Court must be on the form provided by the Court. Application forms and other necessary information will be furnished upon request addressed to the Admissions Clerk, United States Tax Court, Box 70, Washington, D. C. 20044.

(c) **Sponsorship:** An applicant for admission by examination must be sponsored by at least three persons theretofore admitted to practice before this Court, and each sponsor must send a letter of recommendation directly to the Admissions Clerk of the Court, where it will be treated as a confidential communication. The sponsor shall send his letter promptly, stating therein fully and frankly the extent of his acquaintance with the applicant, his opinion of the moral character and repute of the applicant, and his opinion of the qualifications of the applicant to practice before this Court. The Court may in its discretion accept such an applicant with less than three such sponsors.

(d) **Written Examinations:** Written examinations, for applicants other than attorneys at law, will be held in Washington, D. C., on the last Wednesday in October of each year, and at such other times and places as the Court may designate. The Court will notify each applicant, whose application is in order, of the time and place at which he is to present himself for examination, and the applicant must present that notice to the examiner as his authority for taking an examination.

(e) **Checks and Money Orders:** Where the application fee is paid by check or money order, it shall be made payable to the order of the "Clerk, United States Tax Court."

(f) **Admission:** Upon approval of an application for admission and satisfaction of the other applicable requirements, an applicant will be admitted to practice before the Court upon taking and subscribing the oath or affirmation prescribed by the Court. Such an applicant shall thereupon be entitled to a certificate of admission.

(g) **Change of Address:** Each person admitted to practice before the Court shall promptly notify the Admissions Clerk of any change in office address for mailing purposes.

(h) **Corporations and Firms Not Eligible:** Corporations

and firms will not be admitted to practice or recognized before the Court.

RULE 201.
CONDUCT OF PRACTICE BEFORE THE COURT

(a) General: Practitioners before the Court shall carry on their practice in accordance with the letter and spirit of the Code of Professional Responsibility of the American Bar Association.

(b) Statement of Employment: The Court may require any practitioner before it to furnish a statement, under oath, of the terms and circumstances of his employment in any case.

RULE 202. DISQUALIFICATION, SUSPENSION, OR DISBARMENT

The Court may deny admission to, suspend, or disbar any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. Upon the conviction of any practitioner admitted to practice before this Court for a criminal violation of any provision of the Internal Revenue Code or for any crime involving moral turpitude, or where any practitioner has been suspended or disbarred from the practice of his profession in any State or the District of Columbia, the Court may, in the exercise of its discretion, forthwith suspend such practitioner from the Bar of this Court until further order of Court; but otherwise no person shall be suspended for more than 60 days or disbarred until he has been afforded an opportunity to be heard. A Judge of the Court may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any trial or hearing.

APPENDIX I

FORMS

The following forms are listed in this Appendix:

Form 1. Petition (Other Than In Small Tax Case)
*Form 2. Petition (Small Tax Case)
*Form 3. Entry of Appearance
*Form 4. Request For Place of Trial
*Form 5 Subpoena
*Form 6. Application For Order To Take Deposition
Form 7. Certificate On Return
Form 8. Notice of Appeal To Court Of Appeals
Form 9. Appeal Bond, Corporate Surety
Form 10. Appeal Bond, Approved Collateral
Form 11. Power of Attorney and Agreement By Corporation
Form 12. Power of Attorney and Agreement by Individuals
Form 13. Certificate of Service

The forms marked by an asterisk (*) (Forms 2, 3, 4, 5, and 6) have been printed and are available upon request from the Clerk of the Court. All the forms may be typewritten, except that the subpoena (Form 5) must be obtained from the Court. When preparing papers for filing with the Court, attention should be given to the applicable requirements of Rule 23 in regard to form, size, type, and number of copies, as well as to such other Rules of the Court as may apply to the particular item.

FORM 1

PETITION (Other Than In Small Tax Case)

(See Rules 30 through 34)

UNITED STATES TAX COURT

..... Petitioner(s) v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

PETITION

The petitioner hereby petitions for a redetermination of the deficiency (or liability) set forth by the Commissioner of Internal Revenue in his notice of deficiency (or liability) [Service symbols] dated ...., 19..., and as the basis for his case alleges as follows:

1. The petitioner is [set forth whether an individual, fiduciary, corporation, etc., as provided in Rule 60] with legal residence (or principal office) now at

..... (Street) ..... (City) ..... (State) ..... (Zip Code)

The return for the period here involved was filed with the Office of the Internal Revenue Service at ..... (City) ..... (State)

2. The notice of deficiency (or liability) (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A) was mailed to the petitioner on ....., 19..., and was issued by the Office of The Internal Revenue Service at ..... City and State

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (estate, gift, or certain excise) taxes for the calendar (or fiscal) year 19..., in the amount of $..... ..., of which $..... ..., is in dispute.

4. The determination of tax set forth in the said notice of deficiency (or liability) is based upon the following errors: [Here set forth specifically in lettered subparagraphs the assignments of error in a concise manner and avoid pleading facts which properly belong in the succeeding paragraph]

5. The facts upon which the petitioner relies, as the basis of his case, are as follows: [Here set forth allegations of fact, but not the evidence, sufficient to inform the Court and the Commissioner of the positions taken and the bases therefor, in orderly and logical sequence, with subparagraphs lettered, so as to enable the Commissioner to admit or deny each allegation. See Rules 31(a) and 34(b)(5).]

Wherefore, petitioner prays that [here set forth the relief desired.]

(Signed).....
(Petitioner or Counsel)

.....
(Post Office Address)

Dated: ....., 19... .....
Telephone No (include area code)

FORM 2

PETITION (Small Tax Case)
(Available—Ask for Form 2)

(See Rules 170 through 179)

UNITED STATES TAX COURT

.....
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No.

PETITION

1. Petitioner(s) request(s) the Court to redetermine the tax deficiency(ies) for the year(s) ....., as set forth in the notice of deficiency dated .....,

A COPY OF WHICH IS ATTACHED. The notice was issued by the Office of the Internal Revenue Service at . ...

City and State

2 Petitioner(s) taxpayer identification (e.g. social security) number(s) is(are) ....

3. Petitioner(s) make(s) the following claims as to his tax liability:

Year	Amount of Deficiency Disputed	Amount of Addition to Tax, if any, Disputed	Amount of Overpayment Claimed
....	....	.. ..	....
....	....	. . ..	....

4. Set forth those adjustments, i.e. changes, in the notice of deficiency with which you disagree and why you disagree.

....

....

....

....

....

Petitioner(s) request(s) that the proceedings in this case be conducted as a "small tax case" under section 7463 of the Internal Revenue Code of 1954, as amended, and Rule 172 of the Rules of Practice of the United States Tax Court.* [See pages 76 and 77 of the enclosed booklet.] A decision in a "small tax case" is final and cannot be appealed by either arty.

....

Signature of Petitioner (Husband) Present Address

....

Signature of Petitioner (Wife)
(If joint return was filed)

Present Address

... .

Signature and address of counsel, if retained by petitioner(s)

*If you do not want to make this request, you should place an "X" in the following box. ☐

FORM 3

ENTRY OF APPEARANCE
(Available—Ask for Form 3)

(See Rule 24)

UNITED STATES TAX COURT

.... Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

ENTRY OF APPEARANCE

The undersigned, being duly admitted to practice before the United States Tax Court, hereby enters his appearance for the petitioner in the above-entitled case.

Dated:

.....
(Signed)

.....
(Type signature)

.....
(Office address)

.....
(City)

.....
Telephone No (include area code)

A SEPARATE ENTRY OF APPEARANCE MUST BE FILED IN DUPLICATE FOR EACH DOCKET NUMBER.

FORM 4

REQUEST FOR PLACE OF TRIAL
(Available—Ask for Form 4)

(See Rule 140)

UNITED STATES TAX COURT

..... Petitioner(s), v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

REQUEST FOR PLACE OF TRIAL

Petitioner(s) hereby request(s) that trial of this case be held at .....
(City

.....
and State)

Dated: ....., 19...

.....
Signature of petitioner or counsel

FORM 5

SUBPOENA

(Available—Ask for Form 5)

(See Rule 147)

UNITED STATES TAX COURT

.... Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

SUBPOENA

To .. ..

.....

YOU ARE HEREBY COMMANDED to appear before the United States Tax Court

.....

(or the name and official title of a person authorized to take depositions)

at .....on the .....day of .....at .....

(Time) (Date) (Month)

.....

(Place)

then and there to testify on behalf of .....

(Petitioner) or (Respondent)

in the above-entitled case, and to bring with you .....

.....

.....

(Use reverse if necessary)

and not to depart without leave of the Court.

Date: .....

.....

Attorney for (Petitioner) (Respondent) (Name) (Title)

Return on Service

The above-named witness was summoned on the .....day of ....., 19... at .....by delivering a copy of this subpoena to h...., and, if a witness for the petitioner, by tendering fees and mileage to h.... pursuant to Rule 148 of the Rules of Practice of the Tax Court.

Dated .....Signed .....

Subscribed and sworn to before me this .....day of ....., 19....

.....[SEAL]

(Name and Title)

FORM 6

APPLICATION FOR ORDER TO TAKE DEPOSITION*
(Available—Ask for Form 6)

(See Rules 81 through 84)

UNITED STATES TAX COURT

..... Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

APPLICATION FOR ORDER TO TAKE DEPOSITION*

To the United States Tax Court:

1. Application is hereby made by the above-named .. .. (Petitioner or respondent) for an order to take the deposition .....of the following-named person .....;

Name of witness	Post-office address
(a)	....
(b)	.....
(c)	.....
(d)	.....

2. It is desired to take the deposition__ of the above-named person__ for the following reasons (With respect to each of the above-named persons, set forth the reasons for taking the depositions rather than waiting until trial to introduce the testimony or other evidence):

3. The substance of the testimony, to be obtained through the deposition__, is as follows (With respect to each of the above-named persons, set forth briefly the substance of the expected testimony or other evidence):

4. The following books, papers, documents, or other tangible things to be produced at the deposition, are as follows (With respect to each of the above-named persons, describe briefly all things which the applicant desires to have produced at the deposition):

5. The expected testimony or other evidence is material to one or more matters in controversy, in the following respects:

6. (a) This deposition (will) (will not) be taken on written questions (see Rule 84).

(b) All such written questions are annexed to this application (attach such questions pursuant to Rule 84).

7. The petition in this case was filed with the Court on ..... (month, day, year)

The pleadings in this case (are) (are not) closed. This case (has) (has not) been placed on a trial calendar.

---

*Applications must be filed at least 45 days prior to the date set for trial. When the applicant seeks to take depositions upon written questions, the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed questions. The taking of depositions upon written questions is not favored, except when the depositions are to be taken in foreign countries, in which case any depositions taken must be upon written questions, except as otherwise directed by the Court for cause shown (See Rule 84(a)) If the parties so stipulate, depositions may be taken without application to the Court. (See Rule 81(d)).

8. An arrangement as to payment of fees and expenses of the deposition is desired which departs from the Rules 81(g) and 103, as follows:

9. It is desired to take the testimony of ..... on the .....day of ....., 19..., at the hour of .....o'clock ..M.,* at .. ..
(state room number, street number, street name, city and state)
before.. .....
(state name and official title)

10. ....
(name of person before whom deposition is to be taken)
is a person who is authorized to administer an oath, in his capacity as .... Such person is not a relative or employee or counsel of any party, or a relative or employee or associate of such counsel, nor is he financially interested in the action. (For possible waiver of this requirement, see Rule 81(e)(3).)

Dated ....., 19...

(Signed) .....
(Petitioner or counsel)

....
(Post-office address)

*(A deposition in a pending case, under Rule 81, must be completed and filed with the Court at least 10 days prior to trial.)

FORM 7

CERTIFICATE ON RETURN
UNITED STATES TAX COURT

. .. .
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
} Docket No.

CERTIFICATE ON RETURN
OF DEPOSITION

To the United States Tax Court:

I, ..., the person named in an order of this Court dated ....., to take depositions in this case, hereby certify:

1. I proceeded, on the .....day of ....., A.D. 19..., at the office of ...., in the city of .....,
State of ....., at .....o'clock ....m., under the said order and in the presence of .....and .....the counsel of the respective parties, to take the following depositions, viz:

....., a witness produced on behalf of the .....;
(Petitioner or respondent)

....., a witness produced on behalf of the .....;
(Petitioner or respondent)

. . . . . , a witness produced on behalf of the . . . . . .

(Petitioner or respondent)

2. Each witness was examined under oath at such times and places as conditions of adjournment required, and the testimony of each witness (or his answers to the questions filed) was taken stenographically or otherwise recorded and reduced to typewriting by me or under my direction.

3. After the said testimony of each witness was reduced to writing, the transcript of the testimony was read and signed by the witness and was acknowledged by him to be his testimony, in all respects truly and correctly transcribed except as otherwise stated.

4. All exhibits introduced during the deposition are transmitted herewith, except to the following extent agreed to by the parties or directed by the Court (state disposition of exhibits if not transmitted with the deposition):

5. This deposition (was) (was not) taken on written questions pursuant to Rule 84 of the Rules of Practice and Procedure of the United States Tax Court. All such written questions are annexed to the deposition.

6. After the signing of the deposition, no alterations or changes were made therein.

7. I am not a relative or employee or counsel of any party, or a relative or employee or associate of such counsel, nor am I financially interested in the action.

. . . . . .

(Signature of person taking deposition)

. . . . . .

(Official title)

NOTE.—This form, when properly executed, should be attached to and bound with the transcript preceding the first page thereof. It should then be enclosed in a sealed packet, with registered or certified postage or other transportation charges prepaid, and directed and forwarded to the United States Tax Court, Box 70, Washington, D.C. 20044

FORM 8

NOTICE OF APPEAL TO COURT OF APPEALS

(See Rules 190 and 191)

UNITED STATES TAX COURT

. . . . . Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent } Docket No.

NOTICE OF APPEAL

Notice is hereby given that . . . . . hereby appeals to the United States Court of Appeals for the . . . . . Circuit from [that part of] the decision of this court entered in the above captioned proceeding on the . . . . . day of . . . . . , 19 . . . [relating to . . . . .].

. . . . . .

Party or Counsel

. . . . . .

Post Office Address

FORM 9

APPEAL BOND, CORPORATE SURETY

(See Rule 191)

The following is a satisfactory form of bond for use in case bond with a corporate surety approved by the Treasury Department is to be furnished to stay the assessment and collection of tax involved in an appeal from a decision of the Tax Court. The original bond and one copy are required. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

..... Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS that we ..... as principal, and ....., as surety, are held and firmly bound unto the above-named COMMISSIONER OF INTERNAL REVENUE and/or the UNITED STATES OF AMERICA, in the sum of $..... ., (double the deficiency or such sum as the Tax Court has fixed upon petitioner's prior motion), to be paid to the said Commissioner of Internal Revenue and/or the United States of America for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns jointly and severally firmly by these presents.

Signed, sealed, and dated this .....day of ....., 19....

WHEREAS, the above named .....is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years ...., by the United States Court of Appeals for the .....Circuit to reverse the decision rendered in the above-entitled cause.

NOW, THEREFORE, the condition of this Obligation is such that if the above-named ..... shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

..... [SEAL]
(for an individual petitioner)

.....
(for a corporate petitioner)

By .....
Title

(Corporate Seal)

.....
Surety

Attest:

By .....
Title (surety corporate seal)

....
Secretary

FORM 10

APPEAL BOND, APPROVED COLLATERAL

(See Rule 191)

A satisfactory form of bond for use in case an appellant desires to furnish approved collateral (Treasury Department Circular No. 154, Revised), instead of furnishing a corporate surety bond, and also forms of powers of attorney covering the pledged collateral are shown below. The original and one copy are required in either case. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

.... Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent	Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS that .... is held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America in the sum of .....($..... .....) Dollars, to be paid to the said COMMISSIONER OF INTERNAL REVENUE, and/or the UNITED STATES OF AMERICA, for the payment of which, well and truly to be made, the ....binds itself and its successors, firmly by these presents.

Signed, sealed, and dated this .....day of .... , 19....

WHEREAS, the above-named .....is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years ..... by the United States Court of Appeals for the .....Circuit to reverse the decision rendered in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named .....shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The above-bounden obligor, in order the more fully to secure the Commissioner of Internal Revenue and/or the United States in the payment of the aforementioned sum, hereby pledges as security therefor bonds/notes of the United States in a sum equal at their par value to the aforementioned sum, to wit: ..... dollars ($.....), which said bonds/notes are numbered serially and are in the denominations and amounts, and are otherwise more particularly described as follows.

.....

.....

which said bonds/notes have this day been deposited with the Clerk of the United States Tax Court and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the Clerk of the United States Tax Court, authorizing and empowering him, as such attorney to collect or sell or transfer

or assign, the above-described bonds/notes so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

[SEAL]

....
(for an individual petitioner)

(Corporate Seal) ....
Attest: (for a corporate petitioner)

.... By ... .
Secretary Title

FORM 11

POWER OF ATTORNEY AND AGREEMENT BY CORPORATION

(See Rule 191)

KNOW ALL MEN BY THESE PRESENTS: That ....., a corporation duly incorporated under the laws of the State of .....and having its principal office in the city of ....., State of ....., in pursuance of a resolution of the Board of Directors of said corporation, passed on the .....day of ....., 19..., a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint the Clerk of the United States Tax Court as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain United States Liberty bonds or other bonds or notes of the United States, the property of said corporation, described as follows:

Title of bonds/notes	Total face amount	Denomination	Serial No.	Interest dates
.....	... .	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

such bonds/notes having been deposited by it, pursuant to the Act of July 30, 1947, c. 390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with (here enter "the Commissioner of Internal Revenue and/or the United States") under date of ....., which is hereby made a part thereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the ....., the corporation hereinabove named, by .....(Name and title of officer), duly authorized to act in the

premises, has executed this instrument and caused the seal of the corporation to be hereto affixed this ..... . day of ...., 19...
Attest·

....
(Corporate seal) Secretary By.. . . ..
Title

State of ... .
} SS:
County of .....

Before me, the undersigned, a notary public within and for the said county and State, personally appeared .....(Name and title of officer), and for and in behalf of said ..... , corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ... .day of ...., 19... .
[Notarial seal]

.....
Notary Public

My Commission expires .....

FORM 12

POWER OF ATTORNEY AND AGREEMENT BY INDIVIDUALS

(See Rule 191)

KNOW ALL MEN BY THESE PRESENTS· That I (we) ... ., do hereby constitute and appoint the Clerk of the United States Tax Court as attorney for me (us), and in my (our) name to collect or to sell, assign, and transfer certain United States Liberty bonds, or other bonds or notes of the United States, being my (our) property described as follows:

Title of bonds/notes	Total face amount	Denomination	Serial No	Interest dates
....	.....	.....	... .	.....
.....	.....	.....	.....	.....
....	.....	.....	.....	.....

such bonds/notes having been deposited by me (us) pursuant to the Act of July 30, 1947, c. 390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by me (us) with (here enter "the Commissioner of Internal Revenue and/or the United States") under date of ....., which is hereby made a part thereof, and I (we), agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my (our) said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and I (we) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I (we) hereby ratify and confirm whatever my (our) said attorney shall do by virtue of these presents.

In witness whereof, I (we) hereinabove named, have executed this instrument and affixed my (our) seal this . .....day of .. .., 19....

..... [SEAL]

State of . .....
} SS.
County of ....

Before me, the undersigned, a notary public within and for the said county and State, personally appeared .....(Name of obligor), and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ....day of ....., 19 ..
[Notarial seal]

.....
Notary Public

My Commission expires .....

FORM 13

CERTIFICATE OF SERVICE

(See Rule 21)

This is to certify that a copy of the foregoing paper was served on ..... by (delivering the same to him at .....on .....) or (mailing the same on .....in a postage paid wrapper addressed to him at .....).
Dated:

.....
Party or Counsel

APPENDIX II

Code Section 7463

DISPUTES INVOLVING $1,500 OR LESS

(See Rules 170 through 179)

(a) IN GENERAL.—In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) $1,500 for any one taxable year, in the case of the taxes imposed by subtitle A and chapter 12, or

(2) $1,500 in the case of the tax imposed by chapter 11, at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section Notwithstanding the provision of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

(b) FINALITY OF DECISIONS.—A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

(c) LIMITATION OF JURISDICTION.—In any case in which the proceedings are conducted under this section, notwithstanding the provisions of sections 6214(a) and 6512(b), no decision shall be entered redetermining the amount of a deficiency, or determining an overpayment, except with respect to amounts placed in dispute within the limits described in subsection (a) and with respect to amounts conceded by the parties.

(d) DISCONTINUANCE OF PROCEEDINGS —At any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary or his delegate may request that further proceedings under this section in such case be discontinued. The Tax Court, or the division thereof hearing such case, may, if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and (2) the amount of such excess is large enough to justify granting such request, discontinue further proceedings in such case under this section Upon any such discontinuance, proceedings in such case shall be conducted in the same manner as cases to which the provisions of sections 6214(a) and 6512(b) apply.

(e) AMOUNT OF DEFICIENCY IN DISPUTE.—For purposes of this section, the amount of any deficiency placed in dispute includes additions to the tax, additional amounts, and penalties imposed by chapter 68, to the extent that the procedures described in subchapter B of chapter 63 apply.

APPENDIX III

FEES AND CHARGES

(See Rule 148)

(a) Fees and charges payable to the Court:

1.	Filing petition	$10 00
2.	Application for admission to practice	10.00
3.	Photocopies (plain) – per page	.25
4.	Photocopies (certified) – per page	.50
5.	Transmitting record on appeal	*

*Actual cost of insurance and postage

(b) Fees and mileage payable to witnesses, as provided for by 28 U.S.C. sec. 1821:

Witness fee (per day)	$20.00
Per diem in lieu of subsistence	16.00
Mileage (per mile)	.10

Note: The Attorney General of the United States has adopted the Rand-McNally Standard Mileage Guide as the table of distances under 28 U.S.C. sec. 1821.

(c) Charges for copies of transcripts of proceedings·

Transcripts of proceedings before the Tax Court are supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the Court and the reporter. Information as to those rates may be obtained from the Clerk of the Court or from the deputy clerk at a trial session.

APPENDIX IV

PLACES OF TRIAL

(See Rules 140 and 177)

A partial list of cities in which regular sessions of the Court are held appears below.* This list is published to assist parties in making requests under Rules 140 and 177. If sufficient cases are not ready for trial in a city requested by a taxpayer, or if suitable courtroom facilities are not available in that city, the Court may find it necessary to calendar cases for trial in some other city within reasonable proximity of the designated place.

LIST

ALABAMA:
Birmingham.
Mobile.
ALASKA:
Anchorage.
ARIZONA:
Phoenix.
ARKANSAS:
Little Rock.
CALIFORNIA:
Los Angeles
San Diego.
San Francisco.
COLORADO.
Denver.
CONNECTICUT.
New Haven.
DISTRICT OF COLUMBIA:
Washington.
FLORIDA:
Jacksonville.
Miami.
Tampa.
GEORGIA:
Atlanta.
HAWAII:
Honolulu.
IDAHO:
Boise.
ILLINOIS:
Chicago.
INDIANA:
Indianapolis.
IOWA:
Des Moines.
KANSAS:
Kansas City.
KENTUCKY:
Louisville/Frankfort.
LOUISIANA:
New Orleans.
MARYLAND:
Baltimore.
MASSACHUSETTS:
Boston.
MICHIGAN:
Detroit.
MINNESOTA:
St. Paul
MISSISSIPPI:
Biloxi.
Jackson.
MISSOURI:
Kansas City.
St. Louis.
MONTANA:
Helena.
NEBRASKA:
Omaha.
NEVADA:
Las Vegas/Reno.
NEW JERSEY:
Newark.
NEW MEXICO:
Albuquerque.

*The Court sits in about 35 other cities to hear Small Tax Cases A list of such cities is contained in a pamphlet entitl "Election of Small Tax Case Procedure and Preparation of Petitions," a copy of which may be obtained from the Clerk the Court.

NEW YORK:
Buffalo.
New York City.
NORTH CAROLINA:
Greensboro/Durham.
OHIO:
Cleveland.
Cincinnati.
Columbus.
OKLAHOMA:
Oklahoma City.
Tulsa.
OREGON:
Portland.
PENNSYLVANIA:
Philadelphia.
Pittsburgh.
SOUTH CAROLINA:
Columbia.
TENNESSEE:
Knoxville.
Memphis.
Nashville.
TEXAS:
Dallas.
El Paso.
Houston.
Lubbock.
San Antonio.
UTAH:
Salt Lake City.
VIRGINIA:
Richmond.
WASHINGTON:
Seattle.
Spokane.
WEST VIRGINIA:
Charleston/Huntington.
WISCONSIN:
Milwaukee.